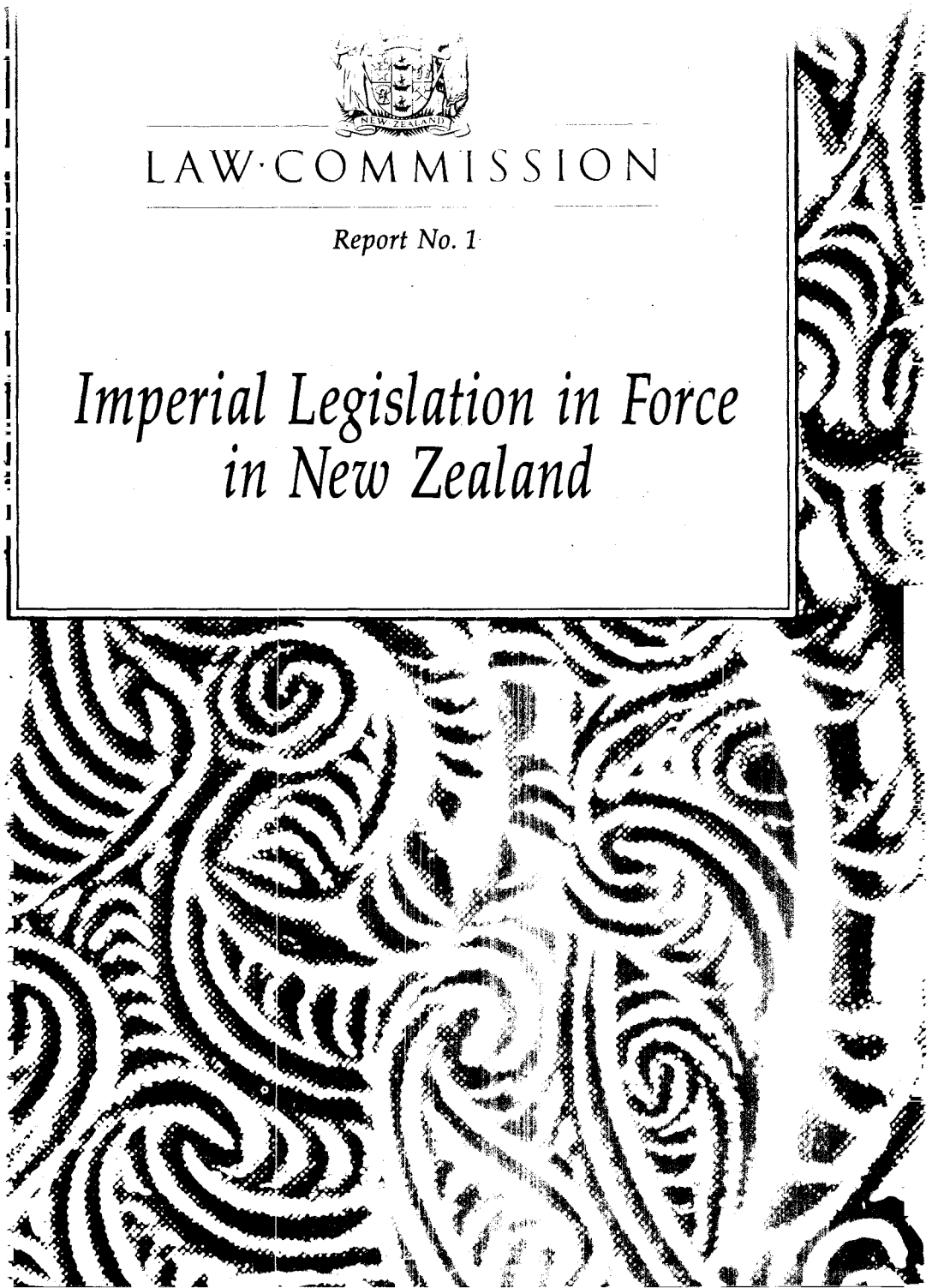
LAW·COMMISSION

Report No. 1

Imperial Legislation in Force in New Zealand



E31A

LAW·COMMISSION

Report No. 1

IMPERIAL LEGISLATION IN FORCE IN NEW ZEALAND

A report on the Imperial Laws Application Bill
introduced in the Parliament of New Zealand on
21 October 1986

1987
Wellington, New Zealand

The Law Commission was established by the Law Commission Act 1985 to promote the systematic review, reform and development of the law of New Zealand. It is also to advise on ways in which the law can be made as understandable and accessible as practicable.

The Commissioners are:

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The Law Commission issued a limited print run of 50 copies of the report and of a supplement dealing with property statutes. The two documents have been brought together in this edition as Report No. 1 of the Law Commission.

Report/Law Commission Wellington, 1987
ISSN 0113–2334
This report may be cited as: NZLC R1
Also published as Parliamentary Paper E31A

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LETTERS OF TRANSMITTAL TO THE RT HON. G. W. R. PALMER, M.P., MINISTER OF JUSTICE

10 March 1987

Dear Minister

I am pleased to submit to you the first report of the Law Commission, on Imperial Legislation in force in New Zealand.

You indicated that you would refer the Report to the Justice and Law Reform Committee which is considering the Imperial Laws Application Bill. I hardly need add that we would be happy to assist the Committee in whatever way it thinks appropriate.

Yours sincerely,

A. O. WOODHOUSE

President

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19 May 1987

Dear Minister

I am pleased to submit to you a supplement to the first report of the Law Commission, on Imperial legislation in force in New Zealand.

The supplement deals with the old property statutes, a matter which was not the subject of a definitive proposal in the original Imperial Laws Application Bill. By agreement with Parliamentary Counsel, the Commission has prepared the supplement with its proposed list of property statutes which are to continue to be part of the law of New Zealand. That matter, we think, was the principal one to be completed before the legislation is enacted.

I assume that, as with the report, you will refer this supplement to the Justice and Law Reform Committee. We of course remain willing to help in whatever way is appropriate with the completion of the legislation.

Yours sincerely,

K. J. KEITH

Deputy President

ACKNOWLEDGMENTS

The Commission is grateful to Mr B. J. Blacktop, Mr Peter Blanchard, Mr A. J. Forbes, Mrs E. D. France, Dr D. W. McMorland, and Professor Richard Sutton who commented on a draft of the part of the report concerned with property statutes (paras. 49-75).

It also benefited from the detailed research of Mr J. G. Hamilton who, as Parliamentary Counsel, prepared the original Bill and its lengthy explanatory notes.

CHRONOLOGICAL TABLE OF IMPERIAL LEGISLATION REFERRED TO

This table gives references to the paragraphs of the Report in which the particular enactment is discussed. The texts of that legislation which the Commission proposes should continue is set out in Appendix A at the pages indicated. Those enactments are as well listed in the schedule to the draft Bill (para. 28).

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†	51 Hen.3, st.4 Statute of the Exchequer	–	51
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† Date Uncertain

* Short title acquired by usage

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1828	9 Geo.4, c.14 Statute of Frauds Amendment Act 1828	130	90
1830	11 Geo.4 and 1 Will.4, c.46 Illusory Appointments Act 1830	–	72
1832	2 and 3 Will.4, c.71 Prescription Act 1832	78	73
1833	3 and 4 Will.4, c.41 Judicial Committee Act 1833	88	13 33 84

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1920	10 and 11 Geo. 5, c.27 Nauru Island Agreement Act 1920	–	102
1923	Order in Council providing for the Government of the Ross Dependency 1923	86	76 82 83
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INTRODUCTION

1. The Law Commission is to keep under review in a systematic way the law of New Zealand. Our first report looks back to the beginnings of a major part of our legal system. It reminds us that the ongoing review of the law begins with our historical inheritance.

2. The Law Commission is also to advise the Minister of Justice on ways in which the laws of New Zealand can be made as understandable and as accessible as is practicable. In making its recommendations the Commission is to have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable. In addition the Minister has asked the Commission, in a reference on legislation and its interpretation, to consider the language and structure of Acts of Parliament.

3. The Imperial Laws Application Bill aims to state definitively what Imperial legislation, enacted before and after New Zealand became a British colony in 1840, is to continue to be part of our law. The proposed Act will thereby make that part of our law more certain and more accessible.

THE SIGNIFICANCE OF THE BILL

4. Our law in part grows from, and contains within its body, legislation dating back to the thirteenth century, to the historic promises made by English Kings and Queens, especially in the Magna Carta in the thirteenth century, in the Petition of Right and the Bill of Rights in the seventeenth, and in the Act of Settlement at the beginning of the eighteenth. Magna Carta and the various confirmatory statutes of later centuries establish for instance the great principle that no one is to be condemned without due process of law.

5. Those documents are critical features of our history and contribute to our political and constitutional principles and systems. They are as well part of our living and practical law, providing legal rules for our governance. They continue to control important aspects of the relationship between individuals and the state. So too do the Acts regulating and confirming the common law right to the great writ of habeas corpus.

6. Other parts of this inheritance from the Parliament at Westminster regulate as well relations between one individual and another, for example in the law passed last century relating to the making of wills, and in the statutes about property beginning in the thirteenth century.

7. Our law includes this early legislation (so far as it is applicable to our circumstances and has not been affected by later law), other Imperial legislation enacted after 1840 and applying to New Zealand, the common law (as developed in part by the New Zealand courts), and the very extensive amount of legislation enacted by the New Zealand Parliament and under its authority.

8. It is both important and convenient that the inherited statute law should be authoritatively identified — important as a statement of our rights and obligations, convenient in its increased accessibility to those affected by it. It is convenient too in that,

once identified in this definitive way, it can be further examined to see whether it fully meets the present day circumstances of New Zealand. The need for such examination was recognised for instance in respect of the procedural rules relating to the writ of habeas corpus when the High Court Rules were promulgated in 1985, and in respect of the old property statutes in the *Final Report on Legislation relating to Landlord and Tenant* of the Property Law and Equity Reform Committee (November 1986).

9. The Law Commission has examined the Bill from the stand point both of its effect and its drafting.

10. The material collected in the Bill and particularly in its explanatory note has a special value. Indeed, following a suggestion made by the Minister of Justice in moving the first reading of the Bill, we propose that this material be recorded in an appropriate form in the Appendices to the Journal of the House of Representatives. However, we believe that the Bill should be made a good deal simpler and briefer. We also believe that some of its provisions are unclear in their effect and indeed in their object. We have therefore prepared an alternative draft.

11. We have been guided by the principles, first, that legislation of this kind should contain only that which is necessary; and, second, that to promote clarity, the language should be as direct as possible.

12. In this report, we –

- examine the categories of Imperial law which are in issue and recommend which should be subject to the Bill (paras. 13–22)
- make recommendations about the way the Bill should deal with the categories subject to it (paras. 23–27)
- propose a draft Imperial Legislation Bill (para. 28)
- comment on its provisions (paras. 29–104)
- explain the omission from our draft of certain of the provisions of the Bill before the House (paras. 105–121).

To facilitate an understanding of our proposals, we have appended (1) the texts of the Imperial legislation which we propose should be kept in force, and (2) the Bill before the House.

CATEGORIES OF IMPERIAL LAW

13. The categories of Imperial law which the Bill and its explanatory note cover or mention are as follows –

(1) *Prerogative instruments.* (The Crown has a prerogative power to make law in certain limited areas; a recent instance is the Letters Patent constituting the Office of Governor-General.)

(2) *The common law* which as part of the "laws of England" is part of the law of New Zealand in terms of the English Laws Act 1908. That Act provides for the continuation in force of (only) the laws of England as at 14 January 1840 (first stipulated as the date of reception in the English Laws Act 1858) so far as applicable to the circumstances of New Zealand.

(3) *Legislation* which as **part of "the laws of England"** is part of the law of New Zealand in terms of the English Laws Act 1908. Like (2), this is limited to the statute law of England of 1840. (See also the 1858 Act and the common law rule it essentially

expressed.) Magna Carta and the Habeas Corpus Acts are major examples.

(4) *Imperial legislation*, both primary and secondary, which **a particular New Zealand Act says is part of the law of New Zealand.** In some cases, as with the Fugitive Offenders Act 1881, the status of the statute may not have been clear before the New Zealand Act was passed. All this Imperial legislation appears to have been enacted since 1840 (cf. category (3)), and some also comes under the next heading.

(5) *Imperial legislation*, primary and secondary, which is part of the law of New Zealand of its own force. That force may appear from its express terms, as for example with the New Zealand Boundaries Act 1863, or from necessary intendment, as with the Judicial Committee Acts. The same two examples show that this category can be divided into legislation relating (a) peculiarly to New Zealand or (b) generally to the Empire as a whole. All this legislation appears to have been enacted since 1840.

We make the following proposals about the way in which the Bill should deal with each of these categories of Imperial law.

PREROGATIVE INSTRUMENTS

14. The Bill as at present drafted mainly affects, first, Imperial enactments (defined as **meaning** principal legislation: cl.2(1)); and, second, Imperial subordinate legislation: see cls. 4(a) and (b), 5, 6, 7 and 8. That is to say, in their own terms the operative provisions which continue the existing law in force do not themselves apply to prerogative instruments. Clause 10(10)(d) reinforces that by making it clear that nothing in the Act is to limit or affect any prerogative instrument. Clause 10(10)(b) and (c) also specifically excludes from the scope of the Act the Letters Patent relating to the Governor-General and those annexing the Kermadec Group. (As noted in paras. 77 and 78, later Imperial legislation relates to the Letters Patent concerning the Kermadec Group.) We agree that the Bill should not apply to prerogative instruments. That however is already clearly the case from the positive operative provisions of the Bill. Express savings provisions to the same effect are not required. Accordingly we propose that *the Bill should not refer to prerogative instruments.*

THE COMMON LAW

15. The only non-statutory law to which the Bill positively applies is the common law of England which "shall have effect as part of the laws of New Zealand to the extent provided by section 2 of the English Laws Act 1908 ... except so far as the said ... laws have been effectively amended or affected (whether before or after the commencement of this Act) by [applicable Imperial or New Zealand legislation]" (cl.4(c)). We can see no reason for, and some harm in, this direction to the courts. The reference is to the common law only of England and only as it was on 14 January 1840. The courts of course apply, without any statutory direction, common law principles and rules, drawing on judicial decisions in many different jurisdictions over time and up to the present day. The formulation in the Bill says by contrast that except in so far as the 1840 English common law has been changed by **enacted** law it

shall have effect as part of the law of New Zealand and be applied in the administration of justice. That obviously cannot be so.

16. We accordingly propose that *the Bill should not refer to the common law.* A related point concerns the English Laws Act 1908. Its substance, so far as pre-1840 statutes are concerned, is being overtaken by the comprehensive provisions in the Bill. Because of that and because the Act no longer has any real significance for the common law we propose *the repeal of the English Laws Act 1908* as spent. (Compare cls. 19–21 of the Bill.)

IMPERIAL LEGISLATION EXPRESSLY RECOGNISED OR ADOPTED BY THE NEW ZEALAND PARLIAMENT

17. The New Zealand Parliament has already made its position clear in respect of some *Imperial statutes* — all those in category (4), para. 13 above. The right hand column in the schedule to the original Bill (pp. 160–161 of Appendix B) shows that New Zealand legislation in force at the moment has recognised nine Imperial statutes as part of New Zealand law. As, to use the wording of the title to the Bill, the New Zealand Parliament has **already** specified in existing law that those Acts are part of New Zealand law, we can see no need for this category to be included. We do not need duplicated provisions in the statute book. That view gains further strength from the wording of the relevant operative provisions. Clause 6 provides that "*After the commencement of this Act*" the Imperial legislation in question shall have effect as part of New Zealand law to the extent provided by the Act that makes it part of New Zealand law, "*except so far as it has been effectively repealed, amended or affected*" as part of New Zealand law. The two sets of emphasised words introduce uncertainties or questions which do not exist at the moment. As for the first, each of the pieces of legislation is **now** — prior to the commencement of the Act — part of New Zealand law. That may be put in doubt by the first quoted phrase. At the least, it will be necessary to go beyond the new legislation to discover the position before it was passed. Accordingly the new legislation will bring about no greater certainty than before. As for the second set of words quoted, the Acts in question have not (as of now) been repealed; otherwise they would not have been included in the Bill. If they have been expressly amended we think that should be indicated in the particular case. Being "affected" or impliedly amended is a different matter which does require specific wording: see draft cl.3(2) in para. 28 and the commentary on it in para. 33.

18. Accordingly we propose that *the Bill not apply in any operative sense to Imperial Acts which the New Zealand Parliament has already made, or recognised to be, part of New Zealand law.* The Bill should make a simple saving provision in respect of them. This proposal extends equally to regulations (such as the Orders in Council made under the Imperial Fugitive Offenders Act and the Extradition Acts (now repealed) which Parliament has adopted or recognised: see the Fugitive Offenders Amendment Act 1976 s.4, and the Extradition Act 1965 s.21. It probably also deals with the position of colonial stock legislation (see cl.10(7); Public Finance Act 1977 s.162). It would be convenient for such legislation to be

listed in an editorial note when the Act is published. Such a list would be as valuable in practice as one in the Act itself.

IMPERIAL LEGISLATION APPLICABLE ONLY TO NEW ZEALAND

19. The only primary legislation in this category (category 5(a) in para. 13) are the Acts of 1852, 1863, and 1947 listed on p.22 of the Bill. The Acts of 1852 and 1947 have now been repealed by the Constitution Act 1986. That leaves only the New Zealand Boundaries Act 1863 — a statute which gives an incomplete definition of New Zealand's boundaries. The reference to it needs to be supplemented by including the other relevant legal instruments, as in the fourth part of the schedule to the draft Bill set out in para. 28 below. The 1910 and 1972 Orders in Council relating to the Judicial Committee are the secondary legislation coming under this head (para. 85).

IMPERIAL LEGISLATION OF GENERAL APPLICABILITY

20. The categories remaining from those listed in para. 13 are Imperial enactments, primary and secondary, of a general character which either became part of New Zealand law from 1840 under the common law and the English Laws Acts or became part of New Zealand law after that as Imperial legislation (categories 3 and 5(b)). The elimination of uncertainty about the Acts which fall into these categories is the core of the Bill. The remaining question of scope relates to the element of **timing.** All the legislation considered above is already in existence. Indeed it has existed (with the exception of later Privy Council Rules) since at least 1947. The Bill in addition contemplates the possibility that future Imperial Acts may become part of the law of New Zealand. That possibility has now been removed by the Constitution Act 1986. (The Bill was of course introduced before that Act was passed.)

21. To summarise, we propose that the Bill should apply to two categories of Imperial legislation (both primary and secondary) –

(1) legislation enacted before 1840 which then became part of the law of New Zealand, is considered to be still in force, and is judged to be needed; and

(2) post 1840 legislation of an Imperial character which expressly or by necessary intendment applied to New Zealand, is considered to be still in force, and is judged to be needed.

22. As the wording of that summary indicates, a second question has still to be addressed: which **particular** statutes within those two categories **should** be kept in force? That is considered later in this report in paras. 41 to 104 commenting on the schedule to the alternative draft Bill we propose. There are as well general issues affecting the particular answers to that question. These are taken up next.

ACTION TO BE TAKEN IN RESPECT OF THE RELEVANT CATEGORIES OF IMPERIAL LEGISLATION

23. The basic approach of the Bill is to provide, first, that particular listed statutes within the categories are to be preserved; and, second, that all other statutes within the categories are not in force. We agree with that approach. It does of course have to be refined.

24. The first question is whether the preserving provision should be declaratory or prospective. The Bill is prospective. Thus cls. 4 (general), 6 (primary enactments) and 8 (subordinate legislation) all provide that "After the commencement of this Act" the law referred to "shall have effect as part of the laws of New Zealand". The explanatory note discusses the matter in this way:

> *Clauses 4, 5 and 6* of the Bill that was introduced into Parliament in 1981, followed the Imperial Acts Application Act 1969 (N.S.W.) in seeking to indicate the extent to which Imperial enactments have been in force in New Zealand before the commencement of the contemplated legislation. It has since been pointed out that the said clauses did not fully indicate the past position; and that it is difficult, dangerous, and unnecessary to attempt to do so. The present version of the Bill merely states the future application in New Zealand of Imperial enactments, Imperial subordinate legislation, and the other laws of England. In accordance with normal New Zealand practice it leaves the past position unchanged, and to be ascertained in accordance with the rules that have hitherto applied. (pp. xiv–xv)

25. As the quotation indicates, the New South Wales legislation is declaratory. So are the relevant New Zealand statutes keeping particular statutes in force: the Admiralty Act 1973 s.8(1); the Fugitive Offenders Amendment Act 1976 s.4; and the English Laws Act 1908, both generally and in so far as that Act relates to the Wills Amendment Act of 1852 and the two other scheduled Acts. And the notes relating to the particular statutes included in the Schedule to the Bill indicate that, subject to the comments made later in this report, they have been and are part of the law of New Zealand. The wording of the headings to the Parts of the Schedule of *Preserved* Enactments — Imperial Enactments *in Force* in New Zealand *by Virtue of Section 2* of the English Laws Act 1908 [which is itself declaratory], Imperial Enactments *in Force* in New Zealand — makes the same point on the face of the Bill. And the clauses relating to the substituted provisions are all declaratory: cls. 5, 16, 23(2) and 27; and see also the heading to Part II. No difficulties appear to have arisen in New South Wales from the declaratory approach — or here for that matter. Is there really any "difficulty" now in giving the main substantive provision declaratory force so that the Imperial legislation can be seen as having become part of New Zealand law at some time before the commencement of the Act as well as remaining part of the law after its commencement? We agree that it is not "necessary" to do so — but that argument cannot get us very far: the whole Bill itself, while desirable, is not necessary. The "danger" presumably arises from retroactivity. But is the declaratory approach dangerous in this case? As noted and as will appear more clearly in the comments on the Schedule, each statute which we propose should be

continued is already part of the law of New Zealand. The exercise is basically concerned with identifying what existing law we should keep (or "preserve" to use the wording of the shoulder notes to cls. 6 and 8), and the legislative process in this case is not so different from the judicial process which in this area would be equally declaratory and retroactive. (If it were thought necessary, the declaratory language could make a saving in respect of pending litigation.) We therefore propose that *the Bill take a declaratory form in respect of the scheduled legislation* — that which will continue to be part of the law.

26. How should the Bill deal with the second proposition implicit in paras. 21 and 22 above — that the **other** statutes within the categories mentioned are **not** to be in force? Clauses 7(1) and 8(1) provide that "after the commencement of this Act" Imperial legislation not expressly referred to shall not have effect as part of the laws of New Zealand. A possible implication from that wording is that the legislation was formerly in force and is now being repealed or revoked. This gains support from the explicit references to repeal and revocation in cls. 7(2) and 10. We consider that it would be better to avoid that language and implication by saying simply that *that legislation which is not scheduled is not part of the law of New Zealand* (and as well adding that that statement is without prejudice to the question whether it was at some earlier time part of the law).

27. To recapitulate, we propose that the two principal provisions of the Bill be as follows –

(1) a declaration that the scheduled legislation is part of the law of New Zealand; and

(2) a statement that after the commencement of the Act no other Imperial legislation is part of the law except in so far as New Zealand legislation has already so provided. (The Act, when printed, should include a list of the legislation already so recognised.)

DRAFT IMPERIAL LEGISLATION BILL

28. On the basis of the above we propose a draft Bill on the following lines. In preparing the draft, we have followed present drafting practices.

DRAFT

IMPERIAL LEGISLATION BILL
A BILL INTITULED

An Act to specify the Imperial legislation which is part of the law of New Zealand

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement — (1) This Act may be cited as the Imperial Legislation Act 1987.

(2) This Act shall come into force one month after the date on which it receives the Governor-General's assent.

2. Interpretation — In this Act "Imperial legislation" means any Act of the Parliament of England, of Great Britain, or of the United Kingdom, and any Order in Council, regulation or other legislative instrument made thereunder.

3. Scheduled Imperial legislation as part of New Zealand law — (1) The Imperial legislation listed in the Schedule to this Act is declared to be part of the law of New Zealand.

(2) Every provision of that legislation shall, after the commencement of this Act, have the same effect as it had immediately before the commencement of the Act.

(3) The Acts Interpretation Act 1924 shall apply, with the necessary modifications, to that legislation as if it were an Act of the Parliament of New Zealand or a regulation made under the authority of such an Act, as the case may be.

4. Other Imperial legislation not part of New Zealand law – (l) After the commencement of this Act, no Imperial legislation other than that listed in the Schedule to this Act shall be part of the law of New Zealand, except so far as already provided by or under any Act of the Parliament of New Zealand.

(2) Subsection (1) of this section is without prejudice to the question whether any provision of any Imperial legislation which will not be part of the law of New Zealand after the commencement of this Act was part of the law before that time.

(3) If any such Imperial legislation ceases on the commencement of this Act to be part of the law of New Zealand, the Acts Interpretation Act 1924 shall apply as it would apply on the repeal of an Act of the Parliament of New Zealand.

5. Exercise of subordinate lawmaking power under Imperial Acts — Where any Imperial Act that is part of the law of New Zealand vests in the Queen in her Privy Council any power to make any Order in Council, regulation, or other legislative instrument in respect of New Zealand, the Governor-General in Council shall also have and may exercise that power.

6. Repeal, amendments and revocation — (1) The English Laws Act 1908 is hereby repealed.

(2) The Crown Proceedings Act 1950 is hereby amended by adding to clause 1 of its second Schedule the following paragraph: "(d) Informations of intrusion and writs of intrusion."

(3) The Shipping and Seamen Act 1952 is hereby amended by repealing the proviso to section 513(1).

(4) The Merchant Shipping (Registration of New Zealand Government Ships) Order 1946 (S.R. 1946/174), is hereby revoked.

SCHEDULE

Section 3(1)

Imperial Legislation part of New Zealand law

I	*Constitutional legislation*
1297	25 Edw.1 (Magna Carta), c.29
1351	25 Edw.3, St.5, c.4
1354	28 Edw.3, c.3
1368	42 Edw.3, c.3
1627	3 Ch. 1, c.1–The Petition of Right
1688	1 Will. and Mary Sess. 2, c.2–The Bill of Rights 1688 title, preamble, section 1 (as amended by the Juries Act 1825, 6 Geo.4, c.50, s.62) and section 2
1700	12 and 13 Will.3, c.2–The Act of Settlement 1700, the title, preamble, sections 1, 2 (as affected by the Accession Declaration Act 1910, 10 Edw.7 and 1 Geo.5, c.29), and 3, omitting all the words after "the Church of England as by law established"
1772	12 Geo.3, c.11–Royal Marriages Act 1772, sections 1 and 2
1910	10 Edw.7 and 1 Geo.5, c.29–Accession Declaration Act 1910
II	*Habeas corpus legislation*
1640	16 Ch.1, c.10–Habeas Corpus Act 1640, section 6
1679	31 Ch.2, c.2–Habeas Corpus Act 1679, sections 1–5, 7–11
1816	56 Geo.3, c.100–Habeas Corpus Act 1816
III	*Property legislation*
1267	52 Hen. 3, Statute of Marlborough, c.23
1289–90	18 Edw.1, Stat.1 (Quia Emptores), c.1
1539	31 Hen.8, c.1–Partition Act 1539
1540	32 Hen.8, c.32–Partition Act 1540
1540	32 Hen.8, c.34–Grantees of Reversions Act 1540, except section 3
1689	2 Will. and Mary Sess.1, c.5–Distress Act 1689, except sections 3 and 4
1705	4 and 5 Anne, c.3–Administration of Justice Act 1705, sections 9 and 10
1709	8 Anne, c.18–Landlord and Tenant Act 1709, sections 1, 4, 6 and 7
1730	4 Geo.2, c.28–Landlord and Tenant Act 1730, sections 2, 4, 5 and 6
1737	11 Geo.2, c.19–Distress for Rent Act 1737, sections 1, 2, 7, 8, 11, 14, 16 and 17
1832	2 and 3 Will.4, c.71–Prescription Act 1832, sections 1, 2, and 4–8
1851	14 and 15 Vict., c.25–Landlord and Tenant Act 1851, sections 1–4

IV *Boundaries legislation*

1863 26 and 27 Vict., c.23–New Zealand Boundaries Act 1863, preamble and section 2

1887 Letters Patent, dated 18 January, 1887 passed under the Great Seal of the United Kingdom, for the Annexation of certain Islands, known as the Kermadec Group, to the Colony of New Zealand, S.R. & O. and S.I. Rev. 1948, vol. xvi, 861, 1887 New Zealand Gazette 433

1901 Order in Council altering the Boundaries of the Colony of New Zealand [by including the Cook Group] 1901 No. 531, S.R. & O. and S.I. Rev. 1948, vol. xvi, 862, 1901 New Zealand Gazette 1307

1923 Order in Council providing for the Government of the Ross Dependency 1923 No. 974, S.R. & O. and S.I. Rev. 1948, vol. xvi, 865, 1923 New Zealand Gazette 2211

V(A) *Acts concerning the Judicial Committee of the Privy Council*

1833 3 and 4 Will.4, c.41–Judicial Committee Act 1833, section 1 (as amended by the Statute Law Revision Act 1874, 37 and 38 Vict., c.35, s.1, and the Statute Law Revision Act (No. 2) 1888, 51 and 52 Vict., c.57, s.1), section 3, section 5 (as amended by the Court of Chancery Act 1851, 14 and 15 Vict., c.83, s.16, relating to the quorum of the Judicial Committee), and sections 6–9, 11–13, 15–21, 23, 24, and 28 (as amended by the Judicial Committee Act 1843, 6 and 7 Vict., c.38, s.6)

1844 7 and 8 Vict., c.69–Judicial Committee Act 1844, sections 1, 8 and 11

1851 14 and 15 Vict., c.83–Court of Chancery Act 1851, section 16 (relating to the quorum of the Judicial Committee, as amended by the Statute Law Revision Act 1875, 38 and 39 Vict., c.66, s.1)

1853 16 and 17 Vict., c.85–Privy Council Registrar Act 1853

1876 39 and 40 Vict., c.59–Appellate Jurisdiction Act 1876, section 6, final paragraph (relating to the membership of the Judicial Committee)

1881 44 and 45 Vict., c.3–Judicial Committee Act 1881

1887 50 and 51 Vict., c.70–Appellate Jurisdiction Act 1887, sections 3 and 5

1895 58 and 59 Vict., c.44–Judicial Committee Amendment Act 1895, section 1 (as amended by the Appellate Jurisdiction Act 1913, 3 and 4 Geo. 5, c.21, s.3, and the Administration of Justice Act 1928, c.26, s.13) and schedule

1908	8 Edw.7, c.51–Appellate Jurisdiction Act 1908, sections 1, 3(1), 4, 5 and 7
1915	5 and 6 Geo.5, c.92–Judicial Committee Act 1915, section 1
V(B)	*Orders in Council made under section 24 of the Judicial Committee Act 1833, section 1 of the Judicial Committee Act 1844, section 5 of the Appellate Jurisdiction Act 1908, and other relevant powers*
1909	Order in Council making continuing order directing that all Appeals to His Majesty in Council shall be referred to the Judicial Committee, 1909 No. 1228, S.R. & O. and S.I. Rev. 1948, vol. xi, 205
1910	Order in Council regulating Appeals to His Majesty in Council from the Court of Appeal and from the Supreme Court of New Zealand, 1910 No. 70 (L.3), S.R. & O. and S.I. Rev. 1948, vol. xi, 409 (printed, with the amendments made by the following order, in S.R.1973, No. 181)
1972	New Zealand (Appeals to the Privy Council) (Amendment) Order 1972, S.I. 1972, No. 1994 (incorporated in the text of the principal order and printed in S.R. 1973, No. 181)
1982	Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, S.I. 1982 No. 1676
VI	*Other legislation*
1728	2 Geo.2, c.22 Set-off-Title and section 13
1734	8 Geo.2, c.24 Set-off-Title and sections 4 and 5
1750	24 Geo.2, c.23–Calendar (New Style) Act 1750, the preamble, section 1 (omitting the words "in Europe, Asia, Africa and America" and the words "and that the two fixed terms of Saint Hilary and Saint Michael" through to the end of the section) and section 2
1774	14 Geo.3, c.78–Fires Prevention (Metropolis) Act 1774, sections 83 and 86 (as amended by the Statute Law Revision Act 1861, 24 and 25 Vict., c.101)
1806	46 Geo.3, c.37–Witnesses Act 1806
1828	9 Geo.4, c.14–Statute of Frauds Amendment Act 1828, section 6
1837	7 Will. 4 and Vict., c.26–Wills Act 1837, sections 1, 3, 6, 9, 10, 13–31 and 33
1852	15 and 16 Vict., c.24–Wills Amendment Act 1852, sections 1, 3 and 4
1858	21 and 22 Vict., c.27–Chancery Amendment Act 1858, section 2

COMMENTARY ON THE DRAFT BILL

TITLE AND SHORT TITLE

29. In the title and short title the word "laws" appears to be too wide since it includes the common law (and for the reasons given in para. 15 the Bill should not have that scope), and "Acts" appears to be too narrow since it does not include, in general usage, subordinate legislation.

30. The phrase "which is part" is used for the reasons indicated in paras. 24–25. "Law of New Zealand" rather than "laws" appears to be a better wording and is used for instance in the admiralty and fugitive offenders legislation, as well as in the Law Commission Act 1985.

CLAUSE 2—INTERPRETATION

31. There is an argument for not using "Imperial" since it may not be strictly accurate in respect of the "law of England" (in our case the pre-1840 statutes). It is however often used in the present context and no other word suggests itself. The definition in the Acts Interpretation Act 1924, s.4, is too narrow for present purposes since it refers only to statutes enacted by the Parliament of the United Kingdom. Accordingly the wider definition is proposed.

CLAUSE 3—SCHEDULED IMPERIAL LEGISLATION AS PART OF NEW ZEALAND LAW

32. Paragraphs 24–25 explain the declaratory form of cl.3(1). The provision contemplates that the schedule will also specify the subordinate legislation which is to continue. Clause 3(2) reflects the point reserved in para. 17; it can be illustrated by Magna Carta: the generality of the due process clause has obviously been affected by the particularity, say, of the Crimes Act 1961.

33. So far as possible, the draft schedule identifies the particular sections which remain in force and indicates the amendments that have been made to them by both the Imperial and New Zealand Parliaments. Thus the list indicates the Imperial amendments to the Judicial Committee legislation and the New Zealand amendments to the Wills Acts. But there may still be situations in which part of the listed legislation (but not the whole of a listed enactment) has been affected by later legislation—as the examples of chapter 29 of Magna Carta or the impact of state services legislation on the Act of Settlement show. The Act cannot address this question and draft cl.3(2) makes it clear that it does not do so.

34. In principle the Acts Interpretation Act 1924 should apply to all legislation which is part of New Zealand law. As is noted in para. 104 commenting on the schedule to the draft, the New Zealand Parliament has often so provided. The courts will of course as appropriate have regard to the origins of Imperial legislation in interpreting it, but that is true of various other categories of legislation as well. Clause 3(3) is included accordingly.

CLAUSE 4—OTHER IMPERIAL LEGISLATION NOT PART OF NEW ZEALAND LAW

35. The provision avoids express (or even implied) reference to repeal except in the limited context of cl.4(3). Repeal does not appear to be an apt concept to invoke in respect of the bulk of the legislation which was never part of New Zealand law anyway. So far as relevant, however, cl.4(3) avoids the problems arising on repeal from the vague common law doctrines about revival of the earlier law and any consequential need to include specific savings provisions preventing revival. Clause 4(2) leaves open the question whether a particular provision was in force as part of the law of New Zealand at any earlier time.

36. Clause 4(1) should have, as an editorial note, a list of the Imperial legislation already adopted or otherwise recognised as part of the law by the New Zealand Parliament and still in force. That list can be easily established on the basis of the research incorporated in the explanatory note to the Bill: see the legislation mentioned in paras. 17 and 18.

CLAUSE 5—EXERCISE OF SUBORDINATE LAWMAKING POWER UNDER IMPERIAL ACTS

37. The provision raises a conflict between principle and practice. The point of principle is that it is no longer appropriate for the Queen in her Privy Council (that is on the advice of her British Ministers) to be able to make law for New Zealand; see the Constitution Act 1986, s.15(2), which provides that the United Kingdom Parliament no longer has power to make law for New Zealand, the method used to authorise the issue of the Letters Patent constituting the Office of Governor-General (S.R.1983/225), and the related discussion in paras. 2.14–2.19 of the Second Report of an Officials Committee on Constitutional Reform (1986) pp. 31–32. In accordance with that principle, the Queen or the Governor-General, in each case only with the advice of the Executive Council, and no-one else, should be able to exercise the powers now exercisable by the Queen in Council. The Regulations Act 1936, s.9, goes part but only part of the way by empowering the Governor-General to revoke regulations made under any United Kingdom Act and having force in New Zealand. No doubt the review of that Act will take account of the present exercise.

38. The real point in practice is the power of the Queen in Council under the Judicial Committee legislation to make rules relating to that body as the final court for New Zealand. That is the only Imperial statutory power to make subordinate legislation intended to be part of the law of New Zealand that has been used in recent years. (We need not be concerned with any power which the Judicial Committee itself has to make rules (under the Judicial Committee Act 1844, s.11), nor with any relevant prerogative powers, since the former is presumably appropriate to the internal administration of a court and its own determination of its processes, and the latter do not fall within the scope of the Bill.) While cl.5 is not limited to the scheduled Acts and extends to those already declared to be part of New Zealand law the prospect of the use of

the subordinate law making powers in the other Imperial enactments is very remote.

39. The practical situation is that from time to time the **general** Judicial Committee rules, regulating its work as a court, may well be altered or replaced. That might be done in a purely administrative way (as with sitting times and the use of the library), by the prerogative (as with the 1966 order about dissenting opinions), or by subordinate legislative instrument. Clause 5 allows the last to be adopted by the New Zealand executive without however precluding the possibility (which we have recognised may arise from the practicalities of the situation) of the general rules continuing to be made essentially by the United Kingdom authorities. Clause 5 would also facilitate the making by the New Zealand authorities of any rules — such as those of 1972 — which relate only to New Zealand.

CLAUSE 6—REPEAL, AMENDMENTS AND REVOCATION

40. The reason for the repeal of the English Laws Act 1908 is given in paras. 15 and 16. The explanatory note to the Bill explains the (possibly unnecessary) abolition of the information and writ of intrusion (pp. lxxvii–lxxviii). The Shipping and Seamen Act provisions are explained in that note as well: pp. xxv–xxvi. That note indicates that two relevant orders are still saved by that proviso. One would be revoked by cl.6. The other is an Order made by the Queen in Council in 1886 under the Merchant Shipping Act 1876, s.17, which continued in force under the Merchant Shipping Act 1894, s.745(1)(a). The Order declared that certificates for passenger steamers granted in New Zealand had the same force and effect as if they had been granted in the United Kingdom under the Merchant Shipping Acts (provided that the surveys were conducted in accordance with regulations annually approved by the Board of Trade): Order in Council as to certificates for passenger steamers granted by the legislature of New Zealand, S.R. & O. and S.I. Rev. 1948, vol. xiv, 209. The order on its face does "apply" to New Zealand (as the explanatory note says), but it does not appear to be part of New Zealand law: the certificates were **already** effective in New Zealand law (see ss. 181–204 of the Shipping and Seamen Act 1877 (N.Z.)); they were being given wider currency by being recognised for voyages between the United Kingdom and New Zealand (and perhaps for the rest of the Empire too). Accordingly we have not provided for the separate revocation of the order.

COMMENTARY ON THE SCHEDULE TO THE DRAFT BILL

GENERAL

41. The following comments explain variations between the list in the draft schedule set out in para. 28 and the Imperial legislation proposed to be retained under the original Bill. The comments on the property statutes (paras. 49–75) are fuller since the Imperial

Laws Application Bill as introduced and its explanatory note contained no definitive proposals and little supporting comment on those statutes. So far as possible, the draft schedule also indicates the particular provisions of each enactment which remain in force and any amendments made to them.

42. The draft schedule omits the legislation repealed by the Constitution Act 1986 (the Acts of 1852, 1931 and 1947 indicated in bold in Division 1 of Part II of the Schedule to the original Bill) as well as the Colonial Laws Validity Act 1865 which was effectively repealed for New Zealand in 1947.

43. The draft schedule also omits, in accordance with cl.4(1) of the Bill, those Acts which the New Zealand Parliament has already declared to be part of the law of New Zealand: see paras. 17 and 18. Clause 4(1) will also save existing subordinate legislation made under those Acts such as the Orders relating to fugitive offenders. (The Landlord and Tenant Act 1851 and the Wills Amendment Act 1852 are included in the schedule, even although they have already been declared to be in force as part of the law of New Zealand, because of the proposed repeal of the Act that currently does that, the English Laws Act 1908.)

CONSTITUTIONAL LEGISLATION

44. The draft includes three changes from the original Bill.

(1) Only one provision of the Habeas Corpus Act 1640 is included and then along with the other Habeas Corpus statutes for reasons indicated under the next heading in paras. 45 to 47.

(2) The draft essentially proposes in respect of the Act of Settlement that the law relating to the Coronation Oath not be made different from the law of the United Kingdom on that matter. Any change should, we suggest, be made only following appropriate consultations with the governments of other affected Commonwealth countries.

(3) Division I of Part II of the Schedule to the present Bill begins with the Statute of Monopolies 1623, ss. 1 and 6. (It is also the subject of cl.6(2)(c) of the Bill.) Section 1 provides that the Crown has no general power to grant monopolies, while s.6 makes an exception to that by allowing the grant of patents in respect of any manner of new manufactures for fourteen years. The Victorian Act (like the New South Wales one) retains the provisions. The relevant report stated a belief that "it may be desirable to retain [the provisions] even if only from an historical point of view" though "from the practical point of view [retention] would have no effect": *Report from the Statute Law Revision Committee [of the Victorian Legislative Assembly] upon the Imperial Laws Application Act* (1978) 7. The note to the New Zealand Bill similarly states that it is not a matter of great moment whether the provisions are preserved (p.lv). The Australian Capital Territory Commission did not think that the provisions need be retained, in part because, although s.6 is the historical foundation of patent law and is referred to in that context in the Australian Patents Act 1952, s.6, its repeal would make no difference to patent law. Section 2 of the New Zealand Patents Act 1953 similarly defines an invention by reference to the Statute of Monopolies. According to Cooke J., s.6

of the Statute is still the basis of New Zealand patent law because of that incorporation by reference, *Wellcome Foundation* v. *Patents Commissioner* [1983] NZLR 385, 387; see also 400. It does not appear to be necessary for the 1623 legislation also to be part of New Zealand law. And even without s.1 of the Statute it is difficult, if not impossible, to envisage a successful claim to a prerogative power to grant a monopoly. Accordingly, we have not included the Statute of Monopolies in the draft schedule.

HABEAS CORPUS LEGISLATION

45. It is true that the 1640 enactment was of major constitutional importance especially, to quote its title, as an "Act ... for taking away the court commonly called the Star Chamber". The provisions with that purpose essentially had their effect on enactment, and — quite apart from general common law principle — the Crimes Act 1961, s.9, of course, makes impossible any non-statutory criminal process. It would be unlawful and provide a basis for an action in damages (although some of the forfeitures provided for in the 1640 Act would not be available). The Act was repealed for the United Kingdom in part in 1888 and 1948 and the rest in 1968 as an "unnecessary enactment" (Justices of the Peace Act 1968, Schedule 5). Accordingly it is not surprising that the New South Wales Law Reform Commission proposed that only the provision relating to Habeas Corpus (s.6) should be retained; and that the Australian Capital Territory Commission did not propose even that retention: *Report of the Law Reform Commission on the Application of Imperial Acts* (1967) 59 and 93; *Imperial Acts in Force in the Australian Capital Territory* (1973) 34. The Victorian Imperial Laws Application Act 1980 goes further and includes the whole of the Act. The report of the relevant parliamentary committee indicates its agreement with the New South Wales action (without however apparently taking the point that only one provision was being kept in force there) (*Report*, para. 44 above, 6).

46. The reasons for the A.C.T. conclusion were as follows –

> The Law Reform Commission of New South Wales recommended the retention of this Act as one of major constitutional importance. We do not agree. The Act is historically significant, but in our opinion cannot have any practical importance at the present time. Its principal provision is s.6, which provided in effect that habeas corpus should be available to a person detained by special order of the King or of the Privy Council or a member thereof. It is clear that long before 1640 the Court of Queen's Bench had decided, in habeas corpus proceedings, that such a special order was not a lawful justification for detention: *Search's Case*; *Howel's Case* (both 1588) 1 Leonard 70. In 1627 the Petition of Right declared such detention illegal. Nevertheless, in 1628 the Court of King's Bench showed some reluctance to grant the writ in such a case. It was apparently this reluctance which led to the passing of the Act of 1640, which did no more than reaffirm the law. See Blackstone, *Commentaries* III, 115. The Act of 1640 can safely be, and should be, repealed.

47. As the explanatory note to the Bill indicates (pp. lvi and lxi), this area of law is in need of reform. Some work was done when

the High Court rules were being completed and in the end a general provision to the following effect was included in the Judicature Act 1908:

> 54C. **Procedure in respect of *habeas corpus*—**(1) The practice, pleading, and procedure in the High Court on an application for a writ of *habeas corpus* shall be the same as in England so far as the English practice, pleading, and procedure are applicable to New Zealand and consistent with any other rules of the High Court and with the laws of New Zealand.
>
> (2) Subject to subsection (1) of this section, nothing in the High Court Rules affects the practice, pleading, or procedure in respect of an application for a writ of *habeas corpus*.

Until that required work is done, we propose that s.6 (and only s.6) be retained.

48. The Victorian, New South Wales and A.C.T. legislation and reports did not consider that the Habeas Corpus Act 1803 was required. An Act for the purpose of removing doubts, it enables the use by the superior common law courts of the writ to enable the appearance of prisoners before Courts Martial, Commissioners of Bankrupt and other Commissioners. In New Zealand s.26 (as enacted in 1985) of the Penal Institutions Act 1954 gives wide power to provide for the attendance of prisoners for judicial purposes (as well as for proceedings relating to an offence with which prisoners are charged). These powers are broad and appear to be adequate — they are indeed the reason for the non-inclusion of the similar Habeas Corpus Act 1804 in the Schedule to the original Bill (see p.lxxxviii of the explanatory note). (And they can, if necessary, be supplemented by the powers of the High Court, defined as they are by reference to the powers of the superior courts at Westminster at the time of the establishment of the Supreme Court.) Accordingly, we have not included the 1803 Act.

PROPERTY LEGISLATION

49. In preparing the list contained in part III of the schedule to the draft Bill we used the following sources: the Imperial Laws Application Bill and its explanatory note (although, because the Bill was incomplete in this area, those documents were not as useful as they were in respect of other categories of statutes), the reports and legislation from Victoria, New South Wales, and the Australian Capital Territory, the Property Law Amendment Bill of 1974, and the interim (1983) and final (1986) reports of the New Zealand Property Law and Equity Reform Committee on legislation relating to landlord and tenant. (The New South Wales and A.C.T. reports are referred to in para.45. The Victorian report is *Report on the Imperial Acts Application Act 1922* by Gretchen Kewley (1975).) We have also had regard to text books, to the New Zealand commentaries to Halsbury's Laws of England, and to the list of Imperial Statutes apparently in force in New Zealand included in the 1931 reprint of New Zealand statutes. And we have benefited from the comments of former members of the Property Law and Equity Reform Committee and Departmental officers on a draft of the relevant parts of this report.

50. The Bill as introduced contained several provisions to be substituted for the old enactments (cls. 15, 23 and 26). We later

indicate why we prefer simply to include those provisions in the schedule and not propose new provisions (paras. 89, 90 and 95). We have not proposed any substituted provisions to be included within the principal substantive enactments relating to the law of property and of landlord and tenant. One reason is that time does not allow, but a more compelling one is that such an exercise would involve a substantial reconsideration of those statutes. That would mean the relevant issues of policy including those raised by the 1986 report of the Property Law and Equity Reform Committee. For example that Committee proposed that the right of distress of landlords, which was cut back in 1975, should be completely abolished. (That was also the original proposal in the Bill which became the Property Law Amendment Act 1975.) Until such matters are fully considered, and decisions reached, it seems to us to be premature to attempt to make patchwork amendments to the legislation. While the Committee in its 1986 report took these matters a considerable distance, there is not a sufficient basis at the moment for the preparation of final legislation. Given that the larger enterprise might well soon be undertaken, we have not tried to judge as closely as we have done in other cases whether particular statutes should be omitted. We have included some that on more careful examination might have been excluded. We are confident on the other hand that we have not excluded property legislation that ought, even out of an abundance of caution, to be retained within the list. It will be recalled that the legislation which is included is to be read subject to subsequent developments, including changes made by the New Zealand Parliament to the law in issue. See cl.3(2) of the draft Bill and paras. 32–33. So, to take the example mentioned, the changes which have been made to the ancient law of distress by the New Zealand Parliament over the last century will continue in effect.

51. *Statute of Marlborough 1267, cc. 1, 2, 3, 4, 15 and 21.* These provisions relate to the power of a landlord to distrain for arrears of rent. That power is denied for dwellinghouses and is implied into other leases by the Property Law Act 1952, s.107A(1) (compare the rights created by s.107B) and s.107(c); Residential Tenancies Act 1986, s.33. The matter is also regulated in some detail by the Distress and Replevin Act 1908, the provisions of which appear to supersede the 1267 stipulations. The leading New Zealand text book on land law does not mention the old provisions in its discussion of distress (Hinde, McMorland & Sim, *Land Law* (1978) para. 5.160), nor do J. F. Burrows' essay on "Ancient English Statutes in the Law of Landlord and Tenant" in Hinde (ed.) *Studies in the Law of Landlord and Tenant* (1975) 31, 41 and R. A. McGechan's New Zealand Commentary to Halsbury's Laws of England (4th ed.), *Distress*. The New South Wales and Australian Capital Territory Commissions both thought that the provisions were obsolete or unnecessary and should not be continued (p.70 and p.7). See somewhat similarly p.20 of the Interim Report on Legislation Relating to Landlord and Tenant (1983) of the Property Law and Equity Reform Committee. We have also not included the so-called statutes of the Exchequer (time uncertain, in Ruffhead, 51 Hen.3., st.4). They are not included in the Australian legislation or the 1931 list, nor do they appear to be discussed in Hinde, McMorland & Sim, and Burrows. They appear to be obsolete.

52. *Statute of Marlborough 1267, c.23.* This particular provision relates to waste. It altered the common law rule and placed the obligation on certain tenants by express grant (in addition to those whose estates arose by operation of law) not to make waste, i.e. not to do acts which cause a lasting alteration to the land to the prejudice of the person who has the remainder or reversion of the land. For dwellinghouses the law of waste ceased to apply from 1975 and was replaced by a new statutory set of obligations, Property Law Act 1952, ss. 116C and 116D. See also ss. 40–42 of the Residential Tenancies Act 1986. In addition all tenants of premises other than a dwellinghouse are under an obligation of repair, Property Law Act 1952 s.106(b). And in practice leases regularly impose an obligation on tenants to repair. The old statute may however continue to apply to certain tenancies; see also Property Law Act 1952 s.29. The New South Wales and A.C.T. Commissions (p.48 and p.12) and the Property Law and Equity Reform Committee (1986 report, paras. 38–46) all agree that the substance of the provision should be retained. Accordingly, we have included this provision in the draft schedule. Its operation will continue to be subject to later legislation, including that mentioned in this paragraph.

53. *Statute of Gloucester 1278, cc. 1 and 5.* Chapter 1 entitled plaintiffs in actions who recovered damages also to recover costs. It is unnecessary given the powers of courts to award costs and was considered obsolete and not included in the New South Wales (p.72) and A.C.T. (p.24) lists. We similarly have not included it in the draft schedule.

54. Chapter 5 provided that certain tenants guilty of waste may lose the lease and be subject to triple damages. It created a writ of waste which in practice was replaced by an action on the case and was finally abolished in 1833. The 1931 list, Burrows (p.33) and Hinde, McMorland & Sim, para. 12.024, all suggest that the provision is still part of New Zealand law. As already noted (para. 52), the law of waste no longer applies to residential tenancies and this provision would apply only to certain of the other tenancies, subject to the provisions in the 1952 Act and to the terms of the lease. The Property Law and Equity Reform Committee does not consider the provision in its discussion of waste, referring only to the Statute of Marlborough (para. 52; see paras. 38–46 of the 1986 Report).

55. The New South Wales and Australian Capital Territory reports (p.72 and p.24) both say that the provisions of the Statute of Gloucester other than chapter 1 (discussed in para. 53) are obsolete. We have noted in para. 52 that they consider that the substance of the provision of 1267 that relates to waste should be retained. We also mentioned the other provisions about tenants' obligations included in New Zealand legislation. The New South Wales report in addition records that all the 1278 provisions have been repealed in England. Accordingly, we have not included the provisions in the draft schedule.

56. *Statute of Westminster the Second 1285, cc. 2, 14, 22 and 37.* This statute dealt with a variety of matters including land law issues. Some of the provisions have been repealed for New Zealand by the Administration Act 1969 s.84 and Fourth Schedule,

and the Crimes Act 1961 s.412 and Fourth Schedule. The provisions listed above (taken from the explanatory note to the Bill) relate to distress and waste. Burrows and Hinde, McMorland & Sim do not discuss the provisions. Both the New South Wales and A.C.T. Commissions proposed that none of the remaining provisions of the statute should remain part of the law (pp. 72–73 and 24–25). We have accordingly not included any of the provisions in our draft schedule.

57. *Quia Emptores 1289–1290.* This is a fundamental statute in the law of real property, enabling the direct sale of land. The Victorian, New South Wales and A.C.T. reports proposed retention of the provision in a substituted form (pp. 60–63, pp. 52–56 and p.12). Hinde, McMorland & Sim, *Land Law* (1978), para. 1.014, confirm that it is still part of the law of New Zealand. We have accordingly included the provision in the draft schedule. In accordance with cl.3(2) of the draft Bill the provisions are of course subject to the great mass of legislation enacted since. We have not included the statute of 34 Edw.3, c.15 (1361) — confirming alienations. The New South Wales Commission considered it was covered by the wording of its substituted provision (pp. 54, 56), while the A.C.T. Commission doubted that it had any effect (p.27). It was repealed for Victoria in 1922, and seems not to be discussed in Hinde, McMorland & Sim. By its own terms it appears to be restricted in its application to its time.

58. *Partition Acts of 1539 and 1540.* They give a statutory right to joint tenants and tenants in common to demand partition of their shared property. The Acts appear to be part of the law of New Zealand, *Fleming* v. *Hargreaves* [1976] 1 NZLR 123, 127. The Property Law Act 1952, part XIII, also empowers the court to order a sale instead of a partition. Those provisions do not however appear to cover the whole ground of partition and sale in the way that the New South Wales Conveyancing Act 1919, ss. 66F–66I, does (with the consequence that in that jurisdiction and the A.C.T. the old Acts could be repealed as obsolete, N.S.W. Report p.85, A.C.T. Report pp. 29, 30). Accordingly we have retained the Acts in the draft schedule.

59. *Grantees of Reversions Act 1540.* The effect of this Act is that the benefits and burdens of the conditions of the lease which touch and concern the land pass with the reversion of the lease. It was treated as being part of the law of New Zealand in *Kebbell* v. *Jacka* (1867) 1 NZCA 39. The Act has been repealed in the United Kingdom, the replacement provisions now being ss. 141 and 142 of the Law of Property Act 1925. The New South Wales Commission was similarly of the view that ss. 117 and 118 of the Conveyancing Act 1919 superseded the 1540 provisions (p.87). The New Zealand Property Law Act 1952, ss. 112, 113, is to similar effect, but the 1540 Act, according to the Property Law and Equity Reform Committee, may have a wider scope by applying to incorporeal hereditaments, granted for a term of years (1986, para. 69); see also *Hutchison* v. *Ripeka Te Peehi* [1919] NZLR 373, and similarly the Commentary to Halsbury's Laws of England, *Landlord and Tenant* C391. That Committee proposes that the 1952 provisions be widened in effect (para. 69). The 1540 Act could then cease to be part of the law of New Zealand. In the meantime, we have included it in our draft schedule.

60. *Distress for Rent Act 1689.* The Supreme Court held that this Act was in force in New Zealand in 1930 and applied the provision relating to treble damages for the seizure by a chattel mortgagee of goods distrained: *Cleave* v. *Commercial Loan & Finance Co. Ltd* [1930] NZLR 925. It is listed in the 1931 Reprint as being apparently in force in New Zealand; see similarly Hinde, McMorland & Sim, para. 5.160. The scope of the legislation has been narrowed by the prohibition on distress for rent in respect of dwellinghouses enacted in 1975 and the detail of the Distress and Replevin Act 1908 (para. 51). We have however omitted the penal provisions (ss. 3 and 4) requiring treble and double damages in certain circumstances for the reasons given by the Property Law and Equity Reform Committee in 1983: their severity and the availability of exemplary damages (para. 30). The Final Report of the Committee suggests that this area of law requires review (1986, paras. 96–100; cf. p.21 of the 1983 Interim Report). In the meantime, we have included the Act (other than ss. 3 and 4) in the draft schedule. Once again the effect that later New Zealand legislation will continue to have on those provisions which remain part of the law is recognised in cl.3(2) of the draft Bill.

61. The *Administration of Justice Act 1705.* Prior to this Act, when a property changed hands the legal position of a lessor was incomplete unless the tenant acknowledged his or her obligations to the new landlord, i.e. attorned, see Appendix A to the 1983 Interim Report. Section 9 of this Act removes the need for attornment. Section 10 adds that the tenant will not be prejudiced by the provision, so that the tenant who pays rent to the old landlord without knowledge of the change of ownership is protected. This provision was treated as in force in *Orr* v. *Smith* [1919] NZLR 818, 823, 829.

62. The United Kingdom has preserved the effect of these sections in s.151 Law of Property Act 1925; so too has New South Wales by s.125 of the Conveyancing Act 1919. The Property Law and Equity Reform Committee notes that the substituted provisions are of more limited scope than the original provisions which applied as well to rent charges (1983, p.17, and 1986, para. 67).

63. The Property Law Amendment Bill 1974 would have repealed ss. 9 and 10, and Burrows, p.37 n.31, raises that possibility: see also cl.4(3) of the draft Bill. The Property Law and Equity Reform Committee recommends however that the safer course is to maintain the provisions and recommends their reenactment in modern form as in England and New South Wales (1986, para. 68). In accordance with that view we have included the two provisions in the draft list.

64. *Landlord and Tenant Act 1709.* Section 1 provides that goods are not to be taken in execution from leased property unless the party undertaking the execution first pays to the landlord any rent due (so long as the rent is not more than one year in arrears). The retention of this privilege of the landlord over other creditors was not recommended in New South Wales or A.C.T. (p.105 and p.39). In New Zealand however somewhat similar provision is made in the District Courts Act 1947, s.95, and any repeal of s.1 should have to relate to that section as well and to the position of High Court process (see p.21 of the 1983 Report). The other provisions

of that Act are considered to be obsolete by the New South Wales and A.C.T. Commissions and the Act is not discussed in Hinde, McMorland & Sim. The Property Law and Equity Reform Committee does however see value in the Victorian version of s.4 (about the obligation of the life tenant (para. 60)). Sections 6 and 7 regulate aspects of the landlord's right of distress. (See e.g. *Thompson* v. *Friedlander* (1886) 4 NZLR 168, 179.) Although that right is now denied for dwellinghouses, we have suggested that, pending a more substantial review, the main 1689 provisions should be kept in force (para. 15 and see also Burrows, p.41). We accordingly have included ss. 4, 6 and 7 of the Act in the draft schedule.

65. *Landlord and Tenant Act 1730.* The 1931 Reprint, Hinde, McMorland & Sim, para. 8.155, and Burrows 38–39, 40 all suggest that this Act is part of New Zealand law. The Property Law and Equity Reform Committee proposes the repeal of s.1 which provided for the payment of double the yearly rent by yearly (or longer) tenants who hold over after the end of the lease (1986, para. 36). It sees the adapted substance of s.2 (about the tenant's right to forestall execution by paying the arrears) as being included in a new Act (paras. 93 and 94; see also *Daalman* v. *Oosterdijk* [1973] 1 NZLR 717). Section 3 (about the interaction of courts of equity and law) is not relevant to New Zealand. The courts have several times held that s.4 (about relief from forfeiture of a lease) is part of the law of New Zealand, e.g. *Fooks* v. *Church Property Trustees* (1865) 1 Colonial LJ 1. Section 5 (relating to the recovery by distress of rents seck, rents of assize and chief rents) is perhaps obsolete but Hinde, McMorland & Sim suggest that it still may have significance, para. 8.155, n.4. The substance of s.6 appears not to have been incorporated into modern legislation (as has happened elsewhere). Accordingly, ss. 2, 4, 5 and 6 are included in the draft schedule.

66. *Distress for Rent Act 1737.* Sections 1–7 can be taken as a group. They enable landlords to distrain and sell goods fraudulently carried from the leased premises within 30 days of their removal and to enter dwellinghouses in exercise of this power (on oath to a Justice), and make some associated provisions. The 1931 list and the Property Law and Equity Reform Committee (1983, p.22) suggest the provisions are part of the law. (Hinde, McMorland & Sim, para. 5.166, Burrows (p.40) and the commentary to Halsbury's Laws of England on Landlord and Tenant take that position in respect of particular provisions of the Act.) Sections 3 (penalty of double damages), and 4, 5 and 6 (about processes before Justices if the value is less than £50) no longer appear appropriate. The substantive provisions are subject to the three points already made about distress: that the law of distress no longer applies to dwellinghouses, that the provisions of the Distress and Replevin Act 1908 may well have an effect on the operation of the old statutes, and that the review of this area of law should probably be completed.

67. Section 8 includes within the distress power stock on neighbouring land and produce. The detail of ss. 9 and 10 relating to notice and sale have been superseded by the 1908 Act (see also the 1983 report of the Property Law and Equity Reform Committee p.23).

68. Section 11 deals with fraudulent attornment by tenants. That law has not been modernised in New Zealand and consistently with what is said above about ss. 9 and 10 of the Act of 1705 and the proposals of the Property Law and Equity Reform Committee we have included s.11.

69. Section 12 about the process of ejectment and providing for a penalty of three years rent appears to be both obsolete and inappropriately punitive (see para. 60). Section 13 is an associated provision. Both were repealed for the United Kingdom by the Statute Law Revision Act 1867 and we have not included them in the draft schedule.

70. The Property Law and Equity Reform Committee proposed that the substance of s.14 (about actions for use and occupation) should be continued along the lines enacted in Victoria (1986, paras. 48–50). That committee also proposed a modern replacement of the law regulating the matters covered by ss. 16 and 17 (1983, p.23 and see also paras. 25 and 26). It recommended the repeal of s.18 which provided for a penalty of double rent for those holding over. We have made a parallel proposal in respect of s.1 of the Act of 1730 (para. 65).

71. The substance of ss. 19, 20 and 23 is covered by ss. 15, 16, 17, 21 and 22 of the 1908 New Zealand Act. Sections 21 and 22 regulate matters of procedure and are now obsolete and replaced by Rules of Court. Accordingly, we have included ss. 1, 2, 7, 8, 11, 14, 16 and 17 in the draft schedule.

72. *Illusory Appointments Act 1830.* This Act reversed the equitable rule that appointments under a deed of illusory or nominal shares were invalid where the deed in question required appointments to all the objects. (That is already the position at law.) The 1931 list of Imperial statutes apparently in force in New Zealand includes it. The matter now however appears to be covered by s.40 of the Property Law Act 1952. The 1830 Act was repealed in the United Kingdom and replaced by the Law of Property Act 1925, s.158. That provision is substantially similar to s.40 of the New Zealand Act. We have found no indication in New Zealand text books that the 1830 Act is part of New Zealand law (thus Garrow & Willis, Law of Wills and Administration (4th ed.) 131 simply equates the 1830 Act with s.40). Accordingly we have not included the Act in our list.

73. *Prescription Act 1832.* This Act shortened the periods of prescription required for acquiring certain easements. The Court of Appeal held in 1890 that the Act was in force as part of the law of New Zealand, *New Zealand Loan & Mercantile Agency* v. *Corporation of Wellington* (1890) 9 NZLR 10. In 1894, Parliament provided that s.3 was no longer in force here, Light and Air Act 1894, s.5. Given our land transfer system, the other provisions have limited practical application in New Zealand. The Act has also been criticised as strange and perplexing and as one of the worst drafted Acts in the statute book, e.g. Hinde, McMorland & Sim, para. 6.045 and n.31. In the meantime, however, we include it in the draft schedule.

74. *Fines and Recoveries Act 1833.* The explanatory note to the Bill proposes, subject to further study, that this Act be repealed in relation to New Zealand (p.xciii). The legislation relates to the disentailment of estates tail. Such estates were abolished for New Zealand in 1952 and we agree that this Act need not be included in the schedule to the Bill. Hinde, McMorland & Sim do not appear to mention the Act.

75. *Landlord and Tenant Act 1851.* The English Laws Act 1858 in a provision carried forward by the 1908 Act made this Act part of New Zealand law. The 1851 Act regulates aspects of agricultural tenancies. The Property Law and Equity Reform Committee has suggested that the first section (which provides for the extension to the end of the current year of a lease beyond the death of the tenant or the landlord with a life interest) could be repealed without adverse consequences. It proposes the updating of other provisions and makes relevant suggestions (1986, paras. 51–59). In the meantime the prudent course (with the proposed repeal of the English Laws Act 1908) appears to be to include the whole Act in the schedule.

BOUNDARIES LEGISLATION

76. The *New Zealand Boundaries Act 1863* replaced the definition of New Zealand included in the New Zealand Constitution Act 1852 (by extending the southern latitudinal line a further 3 degrees south). Section 2 provides:

> 2. **Boundaries of New Zealand**—The Colony of New Zealand shall for the purposes of the said Act [the New Zealand Constitution Act 1852] and for all other purposes whatever be deemed to comprise all territories, islands, and countries lying between the 162nd degree of east longitude and the 173rd degree of west longitude, and between the 33rd and 53rd parallels of south latitude.

That area includes the main islands of New Zealand, as well as the Chatham Islands and the subantarctic islands. That definition has subsequently been supplemented by British instruments relating to the Kermadec Group, the Cook Group (including Niue), the Ross Dependency, and Tokelau.

77. Letters Patent of 18 January 1887 under the Great Seal of the United Kingdom, reciting the agreement of the New Zealand Legislative Council and House of Representatives, authorised the Governor of New Zealand to declare by proclamation that, from a date declared therein, the islands in the **Kermadec Group** should be annexed to and form part of New Zealand. The proclamation was not to be issued until the New Zealand legislature had passed a law providing that the islands should on the stated day become part of New Zealand and subject to its law. The General Assembly accordingly passed the Kermadec Islands Act on 6 June 1887 and the Governor made the appropriate proclamation with effect from 1 August 1887 (1887 New Zealand Gazette 954). The Letters Patent do not cite any statutory authority and were issued under the prerogative. The statute next mentioned is however relevant to them because of its retroactive terms.

78. The *Colonial Boundaries Act 1895* provides that when the boundaries of a colony have, before or after the passing of the Act, been altered by the Queen by Order in Council or Letters Patent, the boundaries are the boundaries of the colony. Self-governing colonies (including at that point New Zealand) had to consent to the exercise of the power to make any such alteration.

79. That Act (along with powers otherwise vested) was recited in the Order in Council of 13 May 1901 altering the boundaries of the colony of New Zealand to include the **Cook Group.** The Order also recited the consent of both Houses of the Legislature and expressly extended the boundaries as set out in the New Zealand Boundaries Act 1863. From the date to be proclaimed by the Governor the islands and territories within the boundary line, which then or thereafter formed part of His Majesty's dominions, were to come within the boundaries of New Zealand. The date was fixed as 11 June 1901 (1901 New Zealand Gazette 1307). The area described in the order included **Niue.** The administration of Niue was subsequently divided from that of the Cook Islands (see especially the legislation from 1964 to 1966) and both have become self-governing states, in free association with New Zealand, with important consequences for the significance of the boundaries.

80. The *British Settlements Act 1887* authorises the Queen in Council to make laws and establish courts in any British settlement (s.2). She is also authorised to delegate by instrument under the Great Seal or instructions under Her Sign Manual to three or more persons within the settlement the powers conferred on her by the Act (s.3). An Order in Council of 30 July 1923 "by virtue of and in exercise of the powers of the said Act, or otherwise, in His Majesty vested" ordered that–

> that part of His Majesty's Dominions in the Antarctic Seas, which comprises all the islands and territories between the 160th degree of East Longitude and the 150th degree of West Longitude which are situated south of the 60th degree of South Latitude shall be named the Ross Dependency.

The Governor-General of New Zealand was to be the Governor of the Dependency, and he was authorised to make all such rules and regulations as might lawfully be made by His Majesty's authority for the peace, order and good government of the dependency. The British Settlements Act 1945 amended s.3 of the 1887 Act so that it "shall have effect as if" (1) the instruments by which the Queen's powers might be delegated included a reference to an Order of His Majesty in Council, and (2) a reference to "any specified person or persons or authority" was substituted for the reference to three or more persons within the settlement.

81. Two Orders in Council were made in 1925 relating to the Union Islands, also known as the **Tokelau** Islands (and more recently as Tokelau). The first, reciting the Colonial Boundaries Act 1895 and other powers, excluded the islands from the Gilbert and Ellice Islands colony of which they had formerly been part. The second, reciting "the powers in His Majesty vested", ordered that the Governor-General of New Zealand should be the Governor of the islands and have such powers as His Majesty had to make laws for the peace, order and good government of the

islands. The Governor-General could delegate that power to the Administrator of Western Samoa (as he later did) (S.R. & O. 1925, 1768, and 1926 New Zealand Gazette 398). In 1948 the New Zealand and United Kingdom Governments agreed that the islands should become part of New Zealand, and the New Zealand Government accordingly requested that the second of the 1925 orders should be revoked. That was done (the Union Islands (Revocation) Order in Council 1948, S.R. & O. and S.I. Rev. 1948, vol. xvi, 866) and legislation was passed by the New Zealand Parliament declaring the islands to be part of New Zealand (Tokelau Act 1948, s.3).

82. To recapitulate, the definition in the 1863 New Zealand Boundaries Act still provides the starting point, although its reference to the New Zealand Constitution Act 1852 may no longer have any significance and it has been supplemented (expressly only in the case of the Cook Group, including Niue) by the later formal changes. The orders relating to the Kermadec Group, the Cook Islands and the Ross Dependency have not been expressly affected by later actions of the New Zealand or British executive or Parliament. The significance of the 1901 order in respect of the Cook Islands and Niue has though been greatly affected by later developments and especially by their becoming self-governing states in free association with New Zealand.

83. Accordingly, we have included in the draft schedule the 1863 Act and the original British instruments relating to the Kermadec Islands, the Cook Islands and Niue, and the Ross Dependency. There is no reference to Tokelau in the list since its position so far as the boundaries of New Zealand are concerned is now completely covered by the 1948 Act. The list can be matched against the first clause of the Letters Patent constituting the office of Governor-General of New Zealand (S.R.1983/225). It states that the "Realm of New Zealand ... comprises –

(a) New Zealand; and
(b) The self-governing state of the Cook Islands; and
(c) The self-governing state of Niue; and
(d) Tokelau; and
(e) The Ross Dependency".

We have not included the Colonial Boundaries and British Settlements Acts in the schedule since the powers they confer are not capable any longer of exercise as part of New Zealand law and the instruments made under or by reference to them can stand, as they are scheduled, without the original statutory support.

JUDICIAL COMMITTEE LEGISLATION

84. The relevant part of the draft schedule is based in part on the legislation included in the third and fourth editions of *Halsbury's Statutes*, on that listed in *McGechan on Procedure*, and on that referred to in the fourth edition of *Halsbury's Laws of England*. It departs in some details from that in the schedule to the original Bill:

(1) *1833 Act*. Section 4, empowering the Queen in Council to seek advisory opinions from the Judicial Committee, does not appear to be apt for the Queen in right of New Zealand. Section 10 deals with the process of evidence of feigned issues, a concept abolished in English law in 1845. Section 14 empowers the Privy

Council to seek evidence on commission from colonial courts. That also no longer appears to be apt and New Zealand has indeed repealed the related Imperial legislation which would enable it to respond to such a request, Evidence Amendment Act 1962, s.5. And s.31 relating to an undoubted executive power in the area of prize appears to be spent. Section 23 which regulates the continuance of proceedings in certain circumstances appears to be still significant. Section 24 authorises the making of regulations and was recited in the 1957 and 1982 rules. The other sections not listed were repealed by the United Kingdom Parliament in legislation which appears to have extended to New Zealand.

(2) *1843 Act.* This Act regulates ecclesiastical and admiralty appeals. It is not relevant to New Zealand.

(3) *1844 Act.* Sections 2–7 have been repealed with effect for New Zealand (assuming the provisions were applicable in the first place).

(4) *1853 Act.* This Act relates to the powers of the Registrar in respect of evidence, a matter partly regulated by the 1833 Act.

(5) *1876 Act.* Section 6, as indicated in the draft schedule, is in part about the membership of the Judicial Committee as are the *1881 and 1887 Acts* which are accordingly included.

(6) The *1913 and 1928 Acts* amend the 1895 Act and their effect is sufficiently indicated in the proposed entry on that Act.

85. The Orders in Council included in part V(B) of the schedule are those indicated as being effective by Halsbury and McGechan. Any question about the validity in New Zealand law of the 1972 and 1982 orders would be resolved by the listing. It would follow from cl.5 of the draft that any future exercise of the powers should be on New Zealand advice if it is based on statute and applies particularly to New Zealand. Any exercise of a prerogative power as in the Judicial Committee (Dissenting Opinions) Order 1966, 1966 S.I. p.1100, is a different matter: it falls outside the scope of the draft Bill.

OTHER LEGISLATION

86. The draft schedule does not include the *Cestui Que Vie Act 1666* for the reasons given in pp. lxxviii–lxxix of the explanatory note to the Bill. Those reasons led to the conclusion that the Act of 1666 (like that of 1707) should be "repealed because it does not appear that they now serve a necessary or useful purpose for New Zealand".

87. The *Witnesses Act 1806* made it clear that witnesses could not refuse to give evidence on the ground that they would thereby subject themselves to civil liability. The New South Wales Commission did not think that the provision need be retained:

> This Act was probably unnecessary as being merely declaratory of the common law. The Judges were consulted and a substantial majority was of that view.
>
> In view of the provisions of the Evidence Act, 1898–1966 and the common law we recommend that it be repealed. (*Report*, para. 45 above, 124)

The Australian Capital Territory Commission was even more summary: "Unnecessary and should be repealed" (*Report*, para. 45 above, 47).

88. The Evidence Act 1908, s.3, provides that no person is to be excluded from giving evidence in any proceeding on the ground that that person may have an interest in the matter or in the result, and s.4 makes parties, with a proviso about self-incrimination, compellable witnesses. The Act also regulates and limits in certain respects the privilege against self-incrimination (ss. 5 and 16).

89. The legislation appears to assume that there is no privilege against civil liability. Certainly the issue, and the 1806 Act, get no attention in the New Zealand commentary to *Halsbury's Laws of England* (4th ed., Vol. 17, para. 240, n.12, where moreover the most recent cited English case, in 1942, does not use the 1806 Act). The matter is not of major moment. Given that the statutory law of evidence is already untidy, we do not think that its bulk should be further added to at this stage by having a further, substituted provision. It is enough for the section, if retained, simply to be listed and to be taken up in the proposed revision of the statutory law of evidence. We have so provided.

90. The *Statute of Frauds Amendment Act 1828*, s.6 (the only provision of the Act — Lord Tenterden's Act — still in force in New Zealand, the balance having been repealed by the Statute Law Revision Act 1875 and the Limitation Act 1950, s.35(1)) is included in the draft schedule rather than as an amendment to the Contracts Enforcement Act 1956 as proposed in cls. 14–16 of the Bill. The provision proposed in those clauses is essentially in the same form as it was enacted in 1828, and its wording has not, it would appear, been considered by reference to more recent developments in the law of contract and of representations. It might also be thought that it should not appear in a strictly contractual context: might it not also be relevant to the evolving law of liability for negligent misrepresentations? Accordingly the draft lists the provision in the schedule and does not give it special treatment.

91. The *Piracy Act 1850*, s.5, first gives jurisdiction to the admiralty courts mentioned in the earlier (now repealed) provisions of the Act over vessels and goods taken possession of from pirates and makes them liable to condemnation as droits of admiralty (see 1 *Halsbury's Laws of England* (4th ed.) para. 350 and 37 ibid. 1302–1304). Secondly, it provides that if private ownership of any of the property condemned is established then it is to be restored with the payment of salvage of a sum of one eighth of the value of the property, to be distributed to the officers and crew in accordance with a bounties proclamation of 1849 or as otherwise declared. The provisions of course refer to another time, and relate to circumstances which are highly unlikely to recur.

92. The general jurisdiction of the High Court under the Judicature Act 1908, relating back as it does to the jurisdiction of the courts at Westminster, may well include the jurisdiction conferred by the Piracy Act. This is made clearer, if it need be, by the Admiralty Act 1973 which includes within the jurisdiction of the High Court –

any claim for the forfeiture or condemnation of a ship or of

goods ... or for droits of admiralty (s.4(1)(s))

and –

any other admiralty jurisdiction which was vested in it immediately before the commencement of this Act ... (s.4(2)).

That is seen by the Australian and New Zealand commentary to Halsbury as including the jurisdiction under the 1850 Act (1 *Halsbury's Laws of England* (4th ed.) para. 350). Such a reading of the powers of the High Court would also be supported by international law. Under customary international law (as codified in the 1958 Convention on the High Seas, article 19) the courts of the state which seized a pirate ship and its property may decide upon the penalties to be imposed and the action to be taken with regard to the ships and property, subject to the rights of third parties acting in good faith (see also articles 20, 21, and 22; and the parallel articles of the United Nations Convention on the Law of the Sea).

93. These provisions do not include the detail about salvage and its distribution, but that detail too is very much of the time of enactment. It is now anachronistic.

94. Given the broad jurisdictional provisions of the Admiralty Act and the Judicature Act, supported as they are by international law, and the great unlikelihood of this particular law with its now inappropriate detail being invoked, we have not included the Piracy Act 1850, s.5, in the draft schedule.

95. The *Chancery Amendment Act 1858*, s.2 (Lord Cairns' Act), is also listed in the draft schedule rather than, as is proposed in cls. 25–27 of the Bill, put in the form of an amendment to the Judicature Act 1908. The provision is well known (see e.g. the references in *Souster* v. *Epsom Plumbing Ltd* [1974] 2 NZLR 515, 518–522), the proposed provision is in much the same form as the 1858 Act, and the Judicature Act 1908 has long been in need of consolidation (quite apart from the reference on the Court system given to the Law Commission). It should not, we think, be the subject of unnecessary amendment at this point.

96. The *British Law Ascertainment Act 1859* enables courts in any part of Her Majesty's dominions to seek an opinion from a superior court in another part of the dominions about the law there. According to the cases cited in Halsbury, the Act appears not to have been much used. The last reported case of its use is more than 100 years ago (17 *Halsbury's Laws of England* (4th ed.) paras. 96 and 97). The Evidence Act 1908 contains liberal provisions (mentioned in para. 121 below) for getting information about other countries' legislation and law. And the South Australian Law Reform Committee has recommended that the Act should not be retained. The Australian and New Zealand editions of *Cross on Evidence* do not appear to recognize the significance of the legislation for Australia or New Zealand although the former treats it as relevant to **England** (Second Australian Edition by Gobbo, Byrne & Heydon (1979) 648–641; and Third New Zealand Edition by Mathieson (1979) 615–617 who stresses the scope of the provisions of the New Zealand Evidence Act). We propose that it not be included.

97. The *Slave Trade Act 1873* is included as a whole in the schedule to the original Bill. (The explanatory note, p.lxiii, mentions that ss. 22, 26 and 27 have been repealed as part of New Zealand

law by the Crimes Act 1961 and the Extradition Act 1965, but those repeals and other changes to the Act since 1873 — amendments to s.2, the irrelevance for New Zealand of s.24 given the repeal by the Crimes Act 1961 of the earlier Imperial Acts to which that section refers, and the repeal of s.30 and of the Second Schedule to the Act — are not reflected in the schedule to the Bill.)

98. The Act, according to its title, is very much concerned with carrying into effect treaties for the more effectual suppression of the slave trade. Accordingly it authorises the seizure, under treaty, of foreign slave trade vessels (ss. 3–4), it regulates the jurisdiction and procedures of English and colonial courts of admiralty and mixed courts, by reference to the relevant treaties (ss. 5, 7 and 8), and it restrains actions relating to the disposal of condemned vessels and slaves by reference to the treaties (ss. 9 and 10). The multilateral conventions relating to slavery to which New Zealand is party — the Slavery Convention 1926 (60 League of Nations Treaty Series 253) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956 (266 United Nations Treaty Series 3) — contain no provisions relevant to those matters. This is confirmed by the fact that the United Kingdom authorities have not made Orders in Council under s.29 of the 1873 Act in respect of them. (The nineteenth century multilateral slavery treaties relating to Africa — the Act of Berlin of 1885 and the Act of Brussels of 1890 — were effectively superseded by the Convention of St. Germain of 1919, and, at least so far as slavery is concerned, that convention (which in that respect did not affect New Zealand) is long spent.)

99. The possibly relevant bilateral treaties were all concluded in the nineteenth century. (For the treaties see the annotation to s.29 of the 1873 Act in 37 *Halsbury's Statutes* (3rd ed.) 758 and 18 *Halsbury's Laws of England* (4th ed.) para. 1711 n.4.) Those which were concerned only with slavery appear, by their own terms, to have applied only to the United Kingdom (essentially empowering the Royal Navy to visit and seize slave trade vessels of the other state) and not to its colonies; they have not been included, for instance, in New Zealand treaty lists. In any event they have probably long since been considered to have lapsed; thus no relevant United Kingdom Order in Council has been made since 1892. (For the orders in council made in the 1880s and 1890s and the related treaties (with Abyssinia, Egypt, Italy and Spain and the Brussels General Act) see S.R. & O. and S.I. Rev. 1948, vol. xxi, pp. 31–100.) All that is left in this bilateral area for New Zealand are the provisions relating to slavery in Treaties of Friendship and Navigation concluded by the United Kingdom, applicable to the British dominions (including after acquired and existing colonies such as New Zealand), and considered by New Zealand still to be in force: treaties with Argentina of 1825 (article 14), Costa Rica of 1850 (article 14), Liberia of 1848 (articles 9 and 10), Peru of 1850 (article 15), and Venezuela of 1825 (article 13 of the treaty with Colombia, now in force only for Venezuela). (For the treaties see 75 Consolidated Treaty Series 75, 103 CTS 349, 102 CTS 415, 104 CTS 27, 75 CTS 195.) The Liberian Treaty authorises British vessels of war furnished with special instructions under the slave trade treaties to visit and seize Liberian vessels and vessels on the Liberian Coast if they are suspected of being slave traders. Those provi-

sions, like others mentioned above, do not extend to New Zealand; and in any event have long since been spent. The other provisions contain general undertakings (not to be found in treaties of friendship signed later in the century) by the four countries concerned to prohibit the slave trade within their territories and by all persons subject to their jurisdiction. They are not the type of provision envisaged by the Act of 1873.

100. We come to the point that for New Zealand the only extant treaty provisions are those of the 1926 and 1956 multilateral Conventions. The first requires the parties to prevent and suppress the slave trade and to bring about the abolition of slavery in all its forms. The parties are to prevent the transport of slaves in their territorial waters and vessels, to prohibit compulsory and forced labour, and to provide for penalties. The 1956 convention defines institutions and practices similar to slavery (such as debt bondage and serfdom) and requires that they be made crimes. It also, following nineteenth century treaty provisions, declares that slaves who board the vessel of a state party thereby become free. As already noted in para. 98, there are no provisions that relate to the scheme of the remaining provisions of the 1873 Act. The penal provisions of the conventions are reflected in the detail of s.98 of the Crimes Act 1961, after the commencement of which New Zealand acceded to the 1956 convention. And the Extradition Act 1965 deals with any extradition obligations. Other obligations, for instance in respect of the exchange of information with other states parties, can be dealt with by executive action.

101. Our conclusion is that our treaty obligations do not require the retention of the 1873 Act. But what of its other provisions? The possibility of slavery issues arising in New Zealand courts is, to put it at its highest, remote. And the relevant legal principles generally applicable were settled at least two centuries ago. Might the Act nevertheless help? Any powers it confers to visit and seize ships on the high seas, to the extent that they are not dependent on treaty, probably exist under customary international law, as codified in article 22(1)(b) of the 1958 Convention on the High Seas and the United Nations Convention on the Law of the Sea; that law could be invoked by the Crown in a New Zealand court, as probably could the defence of act of state. With one possible exception, the other sections of the Act appear to be quite inappropriate and to be from a long gone era — the provisions for the disposal of vessels and of slaves and for the payment of bounties by Treasury for example. The possible exception is s.5 which confers jurisdiction on the High Court of Admiralty and every Vice-Admiralty court in the dominions, but that jurisdiction is only in respect of vessels, slaves, goods and effects seized "in pursuance of this Act" — a condition which for reasons already indicated could not be satisfied. Accordingly, we have not included the Slave Trade Act 1873 in the schedule to the draft Bill.

102. The *Nauru Island Agreement Act 1920* relates to a 1919 Agreement between Australia, New Zealand and the United Kingdom about the administration of Nauru. The Agreement provided that it was to come into force when ratified by the Parliaments of the three countries. Each of them took that action. The Nauru Island Agreement Act 1920 did that for the United Kingdom and also authorised expenditure payable by it under the Agreement. Somewhat similarly, the New Zealand House of Representatives

and Legislative Council assented to the ratification of the Agreement on 23 and 28 October 1919 respectively (1919 Hansard 795–799, 812–821 and 960–962), and Parliament made the required borrowing approval in the Finance Act 1920, s.15. The Australian Parliament also enacted legislation approving the Agreement. The United Kingdom Act did not purport to apply to New Zealand. In any event the Agreement has long since been amended, been superseded, and has lapsed, Nauru having become independent in 1968. Indeed the three governments, in an agreement of 9 February 1987 which has come to our notice since we first prepared this report, have agreed to terminate the 1919 Agreement "insofar as it is still in force". Accordingly the United Kingdom Act is not included in the draft schedule.

103. The *Short Titles Act 1896* and the *Statute Law Revision Act 1948* are not part of New Zealand law. They need not be made part of it in the limited terms indicated in cl.6(2)(a) of the Bill. First, the relevant short titles are to be included in the New Zealand legislation in any event. Secondly, the Acts Interpretation Act 1924, s.14, already allows reference to the short titles of Imperial Acts in force in New Zealand. Accordingly, we have not included the Acts in the draft schedule, nor any equivalent of cl.6(2)(a) in the draft Bill.

104. The *Interpretation Act 1978* is not in force in New Zealand. No doubt, Imperial legislation (like other legislation) will be interpreted by reference to its origins (among other things). But this general adoption of the United Kingdom Act appears quite inappropriate. It is to be contrasted with the provisions which have frequently made the New Zealand interpretation legislation applicable to Imperial legislation which is part of New Zealand law: e.g. Interpretation Act Amendment Act 1887, Interpretation Act 1888 s.3, Acts Interpretation Act 1908 s.3, Statutes Amendment Act 1936 s.3, Wills Amendment Act 1955 s.2(2), and Fugitive Offenders Act 1976 s.2(2). Accordingly we have not included the Interpretation Act 1978 in our schedule. And there is of course no prospect of future United Kingdom Acts applying of their own force to New Zealand; Constitution Act 1986, s.15(2). The draft accordingly includes no provision like cl.6(2)(b).

COMPARISON WITH THE IMPERIAL LAWS APPLICATION BILL 1986

105. The draft Bill in para. 28 is very much shorter than the Bill introduced into the House. The following paragraphs give the major reasons for the omissions from the draft of provisions at present forming part of the Bill. The commentary has already indicated why some provisions have not been included and especially why some of the Imperial legislation included in the present Bill is not listed in the draft schedule.

106. *Clause 4.* So far as enacted law is concerned, this provision essentially says that later provisions in this Act or later legislation will indicate whether Imperial law is in force. Such a notice provision seems to be unnecessary. Paragraphs 15 and 16 above indicate why we think the common law (para. (c) of cl.4) should not be included within the scope of this Bill.

107. Lines 32 to the end of the clause do raise an issue, already pursued in the detail of the draft schedule and the commentary on it, about the impact of later Imperial and New Zealand legislation on the scheduled enactments. (The same issue arises from the wording of cl.6(1).) If the later legislation has repealed a scheduled enactment, it should not be scheduled. If it has amended or affected an enactment that should, if possible, be indicated. To the extent that that is not possible (as with some of the very early enactments) the draft cl.3(2) attempts to deal with the matter.

108. *Clause 5.* The New South Wales provision referred to in the note to the clause is permissive: "regard **may be** had to the context (if any) of the Imperial enactment ..." We do not think that the provision in either that form or the mandatory form of the New Zealand provision is required. No doubt the courts will, as appropriate, have regard to that context in any event, as they might and already do for example by looking at predecessor provisions in other areas of the statute book. We accordingly propose that no such direction be included.

109. *Clause 6.* Clause 3 of the draft is designed to achieve the principal purpose of cl.6(1) (but takes it further by its declaratory form). The provision also raises the issue, considered in paras. 32, 33 and 107, about changes affecting the scheduled statutes made after their enactment. Paragraphs (a) and (b) of cl.6(2) are discussed in paras. 103 and 104 above.

110. For the reasons set out in para. 44(3) above, cl.6(2)(c) does not appear to be needed. If it were decided nevertheless that ss. 1 and 6 of the Statute of Monopolies should be retained by listing them in the Schedule, their effect would be determined under cl.3(2) of the draft Bill. Clause 6(2)(d) similarly is not needed, and the relevant legislation can simply be listed in the schedule.

111. *Clause 7.* Clause 4(1) and (2) of the draft attempts to deal with the substance of this provision with the variation that the idea of "repeal" does not appear. The issue addressed in subcl.(2) would be dealt with, if it arose, in terms of cl.4(2) of the draft.

112. *Clause 8.* Clause 3 and parts IV and V(B) of the schedule in the draft deal with the substance of this provision, and go further in suggesting the relevant pieces of subordinate legislation that should be scheduled. The "affected" point, noted earlier (e.g. in cl.3(2), and the commentary on it in paras. 32 and 33), may also be relevant here (but given the nature of the subordinate legislation in issue that appears not to be as likely).

113. Given that the Governor-General will have the powers exercisable by the Queen in Council under relevant Imperial Acts by cl.8(6) of the original bill or cl.5 of the draft, the power to be conferred by cl.8(4) appears to be unnecessary. Subclause (5) appears to go without saying, and subcl.(7) to come within subcl.(6). Subclause (8) does no more than make specific the general point which has been made in subcl.(1)(b).

114. *Clause 9.* If the principle underlying s.107 of the Crimes Act 1961 is correct, there might be thought to be no reason for it not to extend to all New Zealand enacted law, including Imperial legislation. The argument is strong that the principle is not correct, in that it contradicts the principle underlying s.9 of the Act. That

matter should however be settled in the context of the Crimes Act 1961 and not here. In the meantime there is no need for the matter to be addressed in this statute.

115. *Clause 10.* Subclauses (1) to (5) of this provision are presumably thought to be necessary because of the "repeals" and "revocations" effected by cls. 7 and 8(1)(b). It appears to be possible to achieve this purpose for the very limited case that might arise in the way indicated in cl.4(3) of the draft.

116. So far as subcl.(6) is concerned, it is well established that the law of charities, while being derived from the preamble to the Charitable Uses Act, can and does stand independently of it, as in Great Britain where although the statute has been wholly repealed "the case law which has been built up during three and a half centuries on the foundation of the preamble remains" *Council of Law Reporting* v. *Attorney-General* [1971] Ch. 626, 644. See similarly *In Re Dilworth* (1896) 14 NZLR 729, 736–737 and the reference in *Auckland Medical Aid Trust* v. *C.I.R.* [1979] 1 NZLR 382, 388 to the "common law" meaning of charitable purposes; and see 5 *Halsbury's Laws of England* (4th ed.) para. 502 and the Australian and New Zealand commentary to it.

117. So far as subcl.(7) is concerned, is it necessary to add to s.162 of the Public Finance Act 1977? That provision has already protected, by reference to the Colonial Stock Acts, New Zealand government securities that had been registered with the Bank of England before 1 April 1978 and which had not been transferred to the register mentioned in the legislation. Given in addition the savings provision in cl.4(1) of the draft, nothing more appears to be needed.

118. So far as subcl.(8) is concerned, the note on p.xciv of the explanatory note to the Bill suggests that the matter can be left to the proposition that in this situation words used in old testamentary instruments take their meaning from the usage and law of the time unless provision has since been made to the contrary. The note suggests that for all reasonably contemporary situations the provision is not required.

119. Subclause (10) contains several savings. They appear not to be required since they (with the possible exception of the instrument relating to the Kermadec group mentioned in para. (c) and included in the draft schedule because of its association with Imperial legislation) are not concerned with Imperial legislation of the type dealt with in the Bill, that is, Imperial legislation which is part of the law of New Zealand. The privileges of the House, the subject of para. (a), are dealt with by a New Zealand statute, even if by reference to United Kingdom law. Paragraphs (b) and (d) are about prerogative powers. Paragraph (e) falls outside the scope of the Bill and the draft, not being Imperial legislation. The orders etc. covered by para. (g) have been expressly adopted by New Zealand legislation (para. 18 above). And para. (h) is not relevant since the Bill is about law which is part of the law of New Zealand. Paragraph (f) remains. If there is Imperial legislation relating to notaries public which is part of the law of New Zealand, it should be scheduled. If on the other hand it is the case that New Zealand law (and it appears to be only the Oaths and Declarations Act

1957, ss. 9 and 11) is doing no more than making use of a non New Zealand institution (as in ss. 10 and 12 of that Act for instance) then the legislation does not have to be preserved as part of New Zealand law. Our conclusion is therefore that cl.10 is not needed.

120. *Clause 11.* This empowers the Governor-General to revive Imperial enactments. It is based on a New South Wales provision. We do not think that the provision can be justified. If an Imperial enactment has not been retained by Parliament when arguably it should have been, Parliament should make the decision whether or not to re-adopt it.

121. *Clauses 3, 12, 13, 24.* These are all concerned with the evidence of Imperial legislation. (Related issues arise in the review of the Regulations Act 1936 and the Acts Interpretation Act 1924 and from the Evidence Act 1908). We do not think that the provisions of cl.3 are needed or helpful. The volumes mentioned are not widely available. The courts have not apparently had difficulty when the matter arises in using Halsbury's Statutes: see for instance *Re Bond (Decd)* [1967] NZLR 234, 237; *Attorney-General* v. *Birkenhead Borough* [1968] NZLR 383, 392; and the *Wellcome* case, para. 44 above. Nor indeed has Parliamentary Counsel who prepared the Bill (see e.g. pp. liv and lxiii of the explanatory note). Section 39 of the Evidence Act 1908 already provides for the admission and receipt by courts of statutes purporting to have been printed under authority. And s.40 allows reference, in liberal terms, to books purporting to contain statutes of other countries. We accordingly have included no such provision. Rather we propose that texts of the provisions which are being kept in force should be reprinted in the statute book along with the Act. That action has already been taken, for instance, in respect of the New Zealand Boundaries Act 1863, the Fugitive Offenders Act 1881, the Wills Acts 1837 and 1852, and the New Zealand Constitution Act 1852; Privy Council rules have been published in the statutory regulations series, and the boundaries orders have appeared in the New Zealand Gazette. We are not inclined to think that such reprints should be given statutory force. Re-enacting provisions essentially in their original form (even in translation) appears artificial.

CONCLUSION

122. Our work on this matter is naturally the outcome of that done by others, especially by Parliamentary Counsel. We have been much assisted by the valuable preliminary work of all concerned.

123. The Law Commission recommends the enactment of an Imperial Legislation Bill as proposed in para. 28. As that title indicates, this Bill would not affect in any way either the prerogative powers of the Crown to make law or the common law. The Bill would specify authoritatively the Imperial legislation, both primary and secondary, which is part of the law of New Zealand. No other Imperial legislation would be part of New Zealand law unless the New Zealand Parliament had already so provided.

APPENDIX A

IMPERIAL LEGISLATION STILL IN FORCE

In assembling the texts of the statutes set out below we have followed the provisions of the United Kingdom Interpretation Act 1978, s.19, about the citation of Acts. Accordingly when the texts are available in the Statutes Revised Series (second edition) published between 1888 and 1929 we have, with one qualification, used that source.

The qualification is that where the texts are already available in the New Zealand statute book we have, in the interests of consistency, used that source. That is so for the Boundaries and Wills Acts.

Because they had been repealed as part of the law of the United Kingdom when the Revised Series was published the Set-Off Acts of 1728 and 1734 and ss. 2 and 4 of the Landlord and Tenant Act 1730 are taken from Ruffhead's Statutes at Large, 1769 edition. The Ruffhead Series has the status of an official text (see s.19(1)(c) Interpretation Act 1978).

The Orders in Council relating to Boundaries and to the Judicial Committee are from the United Kingdom Statutory Instrument series.

We have followed the effect of the United Kingdom Statute Law Revision Acts and New Zealand Reprint practice in usually omitting the enacting provisions which until a century ago appeared in each section of a United Kingdom statute.

25 EDW 1

(MAGNA CARTA) (1297)

Chapter 29 Imprisonment, etc contrary to law

No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor [condemn him, ([1])] but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

25 EDW 3 STAT 5 (1351–2)

Chapter 4 None shall be taken upon suggestion without lawful presentment: nor disfranchised, but by course of law

Item, whereas it is contained in the Great Charter of the franchises of England, that none shall be imprisoned nor put out of his freehold, nor of his franchises nor free custom, unless it be by the law of the land; it is accorded, assented, and stablished, that from henceforth none shall be taken by petition or suggestion made to our lord the King, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of the law; and if any thing be done against the same, it shall be redresseed and holden for none.

28 EDW 3 (1354)

Chapter 3 None shall be condemned without due process of law

Item, that no man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of the law.

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[1] The Latin word *mittemus* while literally translated as *send* or *deal with*, is usually rendered as above.

42 EDW 3 (1368)

Chapter 3 None shall be put to answer without due process of law

Item, at the request of the commons by their petitions put forth in this Parliament, to eschew the mischiefs and damages done to divers of his commons by false accusers, which oftentimes have made their accusations more for revenge and singular benefit, than for the profit of the King, or of his people, which accused persons, some have been taken, and sometime caused to come before the King's council by writ, and otherwise upon grievous pain against the law: It is assented and accorded, for the good governance of the commons, that no man be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land: And if anything from henceforth be done to the contrary, it shall be void in the law, and holden for error.

THE PETITION OF RIGHT (1627)

(3 Car. I c. I)

To the Kingꝰ most excellent Majestie.

Humbly shew unto our soveraigne lord the King the lordꝰ spirituall and temporall and cõmons in Parliament assembled that

[1.] Reciting that by (25) 34 Edw. 1 st. 4 c. 1, by authority of Parliament holden 25 Edw. 3, and by other laws of this realm, the King's subjects should not be taxed but by consent in Parliament

Whereas it is declared and enacted by a Statute made in the tyme of the raigne of King Edward the First cõmonly called Statutum de Tallagio non concedendo, that no tallage or ayde should be layd or levyed by the King or his heires in this realme without the good will and assent of the archbishopps bishopps earles barons knightꝰ burgesses and other the freemen of the cõmonaltie of this realme, and by authoritie of Parliament holden in the five and twentieth yeare of the raigne of King Edward the Third, it is declared and enacted, that from thenceforth no pson should be compelled to make any loanes to the King against his will because such loanes were against reason and the franchise of the land, and by other lawes of this realme it is pvided, that none should be charged by any charge or imposicion called a benevolence nor by such like charge by which the statutes before mencioned and other the good lawes and statutes of this realme your subjectꝰ have inherited this freedome that they should [not[1]] be compelled to contribute to any taxe tallage ayde or other like charge not sett by cõmon consent in Parliament.

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[1] Interlined on the roll.

2. And that commissions have of late issued on which proceedings have been had contrary to law

Yet neverthelesse of late divers cōmissions directed to sundry cōmissioners in severall counties with instruccions have issued, by meanes whereof your people have been in divers places assembled and required to lend certaine sōmes of mony unto your Majestie, and many of them uppon their refusall soe to doe have had an oath administred unto them not warrantable by the lawes or statutes of this realme and have been constrayned to become bound to make apparance and give attendance before your privie councell and in other places, and others of them have been therefore imprisoned confined and sondry other waies molested and disquieted and divers other charges have been laid and levied upon your people in severall counties by lord lieutenᵃntꝯ deputie lieutenᵃntꝯ cōmissioners for musters justices of peace and others by cōmaund or direccion from your Majestie or your privie councell against the lawes and free customes of the realme.

3. Reciting 9 Hen. 3 M.C. c. 29

And where alsoe by the Statute called the Great Charter of the liberties of England, it is declared and enacted, that no freeman may be taken or imprisoned or be disseised of his freehold or liberties or his free customes or be outlawed or exiled or in any manner destroyed, but by the lawfull judgment of his peeres or by the law of the land.

4. Reciting 28 Edw. 3 c. 3

And in the eight and twentith yeere of the raigne of King Edward the Third, it was declared and enacted by authoritie of Parliament, that no man of what estate or condicion that he be, should be put out of his land or tenementꝯ nor taken nor imprisoned nor disherited nor put to death without being brought to aunswere by due ꝓcesse of lawe.

5. And that divers subjects have been imprisoned without cause shewn or cause of detainer certified

Neverthelesse against the tenor of the said statutes and other the good lawes and statutes of your realme to that end ꝓvided, divers of your subjectꝯ have of late been imprisoned without any cause shewed: And when for their deliverance they were brought before your justices by your Majesties writtꝯ of habeas corpus there to undergoe and receive as the court should order, and their keepers cōmaunded to certifie the causes of their detayner, no cause was certified, but that they were deteined by your Majesties speciall cōmaund signified by the lordꝯ of your privie councell, and yet were returned backe to severall prisons without being charged with any thing to which they might make aunswere according to the lawe.

6. And that soldiers have been dispersed in divers counties and inhabitants compelled to receive them

And whereas of late great companies of souldiers and marriners have been dispersed into divers counties of the realme, and the inhabitantꝯ against their willꝯ have been compelled to receive them into their houses, and there to suffer them to sojourne against

the lawes and customes of this realme and to the great greivance and vexacion of the people.

7. Reciting 25 Edw. 3, and that commissions have issued under the great seal for proceedings according to martial law

And whereas alsoe by authoritie of Parliament in the five and twentith yeare of the raigne of King Edward the Third it is declared and enacted that no man should be forejudged of life or limbe against the forme of the Great Charter and the lawe of the land, and by the said Great Charter, and other lawes and statutes of this your realme no man ought to be adjudged to death but by the lawes established in this your realme, either by the customes of the same realme or by Actꝫ of Parliament. And whereas no offendor of what kinde soever is exempted from the ꝓceedingꝫ to be used and punishmentꝫ to be inflicted by the lawes and statutes of this your realme, neverthelesse of late [tyme[1]] divers cõmissions under your Majesties great seale have issued forth, by which certaine ꝑsons have been assigned and appointed cõmissioners with power and authoritie to ꝓceed within the land according to the justice of martiall lawe against such souldiers or marriners or other dissolute ꝑsons joyning with them as should cõmitt any murther robbery felony mutiny or other outrage or misdemeanor whatsoever, and by such sũmary course and order as is agreeable to martiall lawe and as is used in armies in tyme of warr to ꝓceed to the tryall and condemnacion of such offenders, and them to cause to be executed and putt to death according to the lawe martiall.

By ꝑtest whereof some of your Majesties subjectꝫ have been by some of the said cõmissioners put to death, when and where, if by the lawes and statutꝫ of the land they had deserved death, by the same lawes and statutꝫ alsoe they might and by no other ought to have byn judged and executed.

And alsoe sundrie greivous offendors by colour thereof clayming an exempcion have escaped the punishmentꝫ due to them by the lawes and statutes of this your realme, by reason that divers of your officers and ministers of justiꝯ have unjustlie refused or forborne to ꝓceed against such offendors according to the same lawes and statutes uppon ꝑtence that the said offendors were punishable onelie by martiall law and by authoritie of such cõmissions as aforesaid. Which cõmissions and all other of like nature are wholly and directlie contrary to the said lawes and statutes of this your realme.

8. The petition

They doe therefore humblie pray your most excellent Majestie, that no man hereafter be compelled to make or yeild any guift loane benevolence taxe or such like charge without cõmon consent by Acte of Parliament, and that none be called to make aunswere or take such oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusall thereof. And that no freeman in any such manner as is before mencioned be imprisoned or deteined. And that your Majestie would be

[1] Interlined on the roll.

pleased to remove the said souldiers and mariners and that your people may not be soe burthened in tyme to come. And that the aforesaid cõmissions for pceeding by martiall lawe may be revoked and annulled. And that hereafter no cõmissions of like nature may issue forth to any pson or psons whatsoever to be executed as aforesaid lest by colour of them any of your Majesties subjectꝯ be destroyed or put to death contrary to the lawes and franchise of the land.

All which they most humblie pray of your most excellent Majestie as their rightꝯ and liberties according to the lawes and statutes of this realme, and that your Majestie would alsoe vouchsafe to declare that the awardꝯ doingꝯ and pceedings to the p̃judice of your people of any of the p̃misses shall not be drawen hereafter into consequence or example. And that your Majestie would be alsoe graciouslie pleased for the further comfort and safetie of your people to declare your royall will and pleasure, that in the thingꝯ aforesaid all your officers and ministers shall serve you according to the lawes and statutes of this realme as they tender the honor of your Majestie and the prosperitie of this kingdome.

Qua quidem peticõe ĩca & plenius intectꝫ a p d̃cm d̃nm regem taliꝰ est responsum in pleno parliamento videꝫt.

R°, Soit droit fait come est desire.

THE BILL OF RIGHTS (1688)

(1 Will & Mar sess 2 c 2)

An Act declaring the Rights and Liberties of the Subject and Setleing the Succession of the Crowne

Whereas the lords spirituall and temporall and comons assembled at Westminister lawfully fully and freely representing all the estates of the people of this realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the names and stile of William and Mary Prince and Princesse of Orange being present in their proper persons a certaine declaration in writeing made by the said lords and comons in the words following viz

The heads of declaration of lords and commons, recited—Whereas the late King James the Second by the assistance of diverse evill councillors judges and ministers imployed by him did endeavour to subvert and extirpate the Protestant religion and the lawes and liberties of this kingdome.

Dispensing and suspending power—By assumeing and exerciseing a power of dispensing with and suspending of lawes and the execution of lawes without consent of Parlyament.

Committing prelates—By committing and prosecuting diverse worthy prelates for humbly petitioning to be excused from concurring to the said assumed power.

Ecclesiastical commission—By issueing and causeing to be executed a commission under the great seale for erecting a court called the court of commissioners for ecclesiasticall causes.

Levying money—By levying money for and to the use of the Crowne by pretence of prerogative for other time in other manner then the same was granted by Parlyament.

Standing army—By raising and keeping a standing army within this kingdome in time of peace without consent of Parlyament and quartering soldiers contrary to law.

Disarming Protestants, etc—By causing serverall good subjects being protestants to be disarmed at the same time when papists were both armed and imployed contrary to law.

Violating elections—By violating the freedome of election of members to serve in Parlyament.

Illegal prosecutions—By prosecutions in the Court of King's Bench for matters and causes cognizable onely in Parlyament and by diverse other arbitrary and illegall courses.

Juries—And whereas of late yeares partiall corrupt and unqualifyed persons have beene returned and served on juryes in tryalls and particularly diverse jurors in tryalls for high treason which were not freeholders.

Excessive bail—And excessive baile hath beene required of persons committed in criminall cases to elude the benefitt of the lawes made for the liberty of the subjects.

Fines—And excessive fines have beene imposed.

Punishments—And illegall and cruell punishments inflicted.

Grants of fines, etc, before conviction, etc—And severall grants and promises made of fines and forfeitures before any conviction or judgement against the persons upon whome the same were to be levyed.

All which are utterly and directly contrary to the knowne lawes and statutes and freedome of this realme.

And whereas the said late King James the Second haveing abdicated the government and the throne being thereby vacant his Highnesse the Prince of Orange (whome it hath pleased Almighty God to make the glorious instrument of delivering this kingdome from popery and arbitrary power) did (by the advice of the lords spirituall and temporall and diverse principall persons of the commons) cause letters to be written to the lords spirituall and temporall being protestants and other letters to the severall countyes cityes universities boroughs and cinque ports for the choosing of such persons to represent them as were of right to be sent to Parlyament to meete and sitt at Westminster upon the two and twentyeth day of January in this yeare one thousand six hundred eighty and eight in order to such an establishment as that their religion lawes and liberties might not againe be in danger of being subverted, upon which letters elections haveing beene accordingly made.

The subject's Rights—And thereupon the said lords spirituall and temporall and commons pursuant to their respective letters

and elections being now assembled in a full and free representative of this nation takeing into their most serious consideration the best meanes for attaining the ends aforesaid doe in the first place (as their auncestors in like case have usually done) for the vindicating and asserting their auntient rights and liberties, declare

[1] Suspending power—That the pretended power of suspending of laws or the execution of laws by regall authority without consent of Parlyament is illegall.

Late dispensing power—That the pretended power of dispensing with laws or the execution of laws by regall authoritie as it hath beene assumed and exercised of late is illegall.

Ecclesiastical courts illegal—That the commission for erecting the late court of commissioners for ecclesiasticall causes and all other commissions and courts of like nature are illegal and pernicious.

Levying money—That levying money for or to the use of the Crowne by pretence of prerogative without grant of Parlyament for longer time or in other manner than the same is or shall be granted is illegal.

Right to petition—That it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal.

Standing army—That the raising or keeping a standing army within the kingdome in time of peace unlesse it be with consent of Parlyament is against law.

Subject's arms—That the subjects which are protestants may have arms for their defence suitable to their conditions and as allowed by law.

Freedom of election—That election of members of Parlyament ought to be free.

Freedom of speech—That the freedome of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament.

Excessive bail—That excessive baile ought not to be required nor excessive fines imposed nor cruell and unusuall punishments inflicted.

Juries—That jurors ought to be duly impannelled and returned . . .[1]

Grants of forfeitures—That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

Frequent Parliaments—And that for redresse of all grievances and for the amending strengthening and preserveing of the lawes Parlyaments ought to be held frequently.

The said right claimed, tender of the crown, regal power exercised, limitation of the crown, new oaths of allegiance, etc—And

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[1] The words omitted were repealed by the Juries Act 1825, 6 Geo. 4, c.50, s.62.

they doe claime demand and insist upon all and singular the premises as their undoubted rights and liberties and that noe declarations judgements doeings or proceedings to the prejudice of the people in any of the said premisses ought in any wise to be drawne hereafter into consequence or example. To which demand of their rights they are particularly encouraged by the declaration of his Highnesse the Prince of Orange as being the only meanes for obtaining a full redresse and remedy therein. Haveing therefore an intire confidence that his said Highnesse the Prince of Orange will perfect the deliverance soe farr advanced by him and will still preserve them from the violation of their rights which they have here asserted and from all other attempts upon their religion rights and liberties. The said lords spirituall and temporall and commons assembled at Westminster doe resolve that William and Mary Prince and Princesse of Orange be and be declared King and Queene of England France and Ireland and the dominions thereunto belonging to hold the crowne and royall dignity of the said kingdomes and dominions to them the said prince and princesse dureing their lives and the life of the survivour of them. And that the sole and full exercise of the regall power by onely in and executed by the said Prince of Orange in the names of the said prince and princesse dureing their joynt lives and after their deceases the said crowne and royall dignitie of the said kingdoms and dominions to be to the heires of the body of the said princesse and for default of such issue to the Princesse Anne of Denmarke and the heires of her body and for default of such issue to the heires of the body of the said Prince of Orange. And the lords spirituall and temporall and commons doe pray the said prince and princesse to accept the same accordingly. And that the oathes hereafter mentioned be taken by all persons of whome the oathes of allegiance and supremacy might be required by law instead of them and that the said oathes of allegiance and supremacy be abrogated.

I A B doe sincerely promise and sweare that I will be faithfull and beare true allegiance to their Majestyes King William and Queene Mary

Soe helpe me God

I A B doe sweare that I doe from my heart abhorr, detest and abjure as impious and hereticall this damnable doctrine and position that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I doe declare that noe forreigne prince person prelate, state or potentate hath or ought to have any jurisdiction power superiority preeminence or authoritie ecclesiasticall or spirituall within this realme.

Soe helpe me God. [virtually repealed.]

Acceptance of the crown, the two Houses to sit, subjects' liberties to be allowed, and ministers hereafter to serve according to the same, William and Mary declared King and Queen, limitation of the crown, papists debarred the crown, every King, etc, shall make the declaration of 30 Car 2, if under 12 years old, to be done after attainment thereof, King's and Queen's assent. Upon which their said Majestyes did accept the crowne and royall dignitie of the

kingdoms of England France and Ireland and the dominions thereunto belonging according to the resolution and desire of the said lords and commons contained in the said declaration. And thereupon their Majestyes were pleased that the said lords spirituall and temporall and commons being the two Houses of Parlyament should continue to sitt and with their Majesties royall concurrence make effectuall provision for the setlement of the religion lawes and liberties of this kingdome soe that the same for the future might not be in danger againe of being subverted, to which the said lords spirituall and temporall and commons did agree and proceede to act accordingly. Now in pursuance of the premisses the said lords spirituall and temporall and commons in Parlyament assembled for the ratifying confirming and establishing the said declaration and the articles clauses matters and things therein contained by the force of a law made in due forme by authority of Parlyament doe pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration are the true auntient and indubitable rights and liberties of the people of this kingdome and soe shall be esteemed allowed adjudged deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration. And all officers and ministers whatsoever shall serve their Majestyes and their successors according to the same in all times to come. And the said lords spirituall and temporall and commons seriously considering how it hath pleased Almighty God in his marvellous providence and mercifull goodness to this nation to provide and preserve their said Majestyes royall persons most happily to raigne over us upon the throne of their auncestors for which they render unto him from the bottome of their hearts their humblest thanks and praises doe truely firmely assuredly and in the sincerity of their hearts thinke and doe hereby recognize acknowledge and declare that King James the Second haveing abdicated the government and their Majestyes having accepted the crowne and royall dignity [as[2]] aforesaid their said Majestyes did become were are and of right ought to be by the lawes of this realme our soveraigne liege lord and lady King and Queene of England France and Ireland and the dominions thereunto belonging in and to whose princely persons the royall state crowne and dignity of the said realmes with all honours stiles titles regalities prerogatives powers jurisdictions and authorities to the same belonging and appertaining are most fully rightfully and intirely invested and incorporated united and annexed. And for preventing all questions and divisions in this realme by reason of any pretended titles to the crowne and for preserveing a certainty in the succession thereof in and upon which the unity peace tranquillity and safety of this nation doth under God wholly consist and depend the said lords spirtuall and temporall and commons doe beseech their Majestyes that it may be enacted established and declared that the crowne and regall government of the said kingdoms and dominions with all and singular the premisses thereunto belonging and appertaining shall bee and continue to their said Majestyes and the survivour of them dureing their lives and the life of the survivour of them and

[2] Interlined on the roll.

that the entire perfect and full exercise of the regall power and government be onely in and executed by his Majestie in the names of both their Majestyes dureing their joynt lives and after their deceases the said crowne and premisses shall be and remaine to the heires of the body of her Majestie and for default of such issue to her royall Highnesse the Princess Anne of Denmarke and the heires of her body and for default of such issue to the heires of the body of his said Majestie And thereunto the said lords spirituall and temporall and commons doe in the name of all the people aforesaid most humbly and faithfully submitt themselves their heires and posterities for ever and doe faithfully promise that they will stand to maintaine and defend their said Majesties and alsoe the limitation and succession of the crowne herein specified and contained to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt any thing to the contrary. And whereas it hath beene found by experience that it is inconsistent with the safety and welfaire of this protestant kingdome to be governed by a popish prince or by any King or Queene marrying a papist the said lords spirituall and temporall and commons doe further pray that it may be enacted that all and every person and persons that is are or shall be reconciled to or shall hold communion with the see or church of Rome or shall professe the popish religion or shall marry a papist shall be excluded and be for ever uncapeable to inherit possesse or enjoy the crowne and government of this realme and Ireland and the dominions thereunto belonging or any part of the same or to have use or exercise any regall power authoritie or jurisdiction within the same [And in all and every such case or cases the people of these realmes shall be and are hereby absolved of their allegiance[3]] and the said crowne and government shall from time to time descend to and be enjoyed by such person or persons being protestants as should have inherited and enjoyed the same in case the said person or persons soe reconciled holding communion or professing or marrying as aforesaid were naturally dead [And that every King and Queene of this realme who at any time hereafter shall come to and succeede in the imperiall crowne of this kingdome shall on the first day of the meeting of the first Parlyament next after his or her comeing to the crowne sitting in his or her throne in the House of Peeres in the presence of the lords and commons therein assembled or at his or her coronation before such person or persons who shall administer the coronation oath to him or her at the time of his or her takeing the said oath (which shall first happen) make subscribe and audibly repeate the declaration mentioned in the Statute made in the thirtyeth yeare of the raigne of King Charles the Second entituled An Act for the more effectuall preserveing the Kings person and government by disableing papists from sitting in either House of Parlyament But if it shall happen that such King or Queene upon his or her succession to the crowne of this realme shall be under the age of twelve yeares then every such King or Queene shall make subscribe and audibly repeate the said declaration at his or her coronation or the first day of the meeting of the first Parlyament as aforesaid which shall first happen after such King or Queene shall have attained the said age

[3] Annexed to the original Act in a separate schedule.

of twelve yeares[3]] All which their Majestyes are contented and pleased shall be declared enacted and established by authoritie of this present Parliament and shall stand remaine and be the law of this realme for ever And the same are by their said Majesties by and with the advice and consent of the lords spirituall and temporall and commons in Parylament assembled and by the authoritie of the same declared enacted and established accordingly

2 Non obstantes made void

... noe dispensaton by non obstante of or to any statute or any part thereof shall be allowed but ... the same shall be held void and of noe effect except a dispensation be allowed of in such statute ...[4]

Section 3, a savings provision, is omitted as spent.

THE ACT OF SETTLEMENT (1700)
(12 & 13 Will 3 c 2)

An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject

WHEREAS in the first year of the reign of your Majesty and of our late most gracious sovereign lady Queen Mary (of blessed memory) an Act of Parliament was made intituled (An Act for declaring the rights and liberties of the subject and for setling the succession of the crown) wherein it was (amongst other things) enacted established and declared that the crown and regall government of the kingdoms of England France and Ireland and the dominions thereunto belonging should be and continue to your Majestie and the said late Queen during the joynt lives of your Majesty and the said Queen and to the survivor and that after the decease of your Majesty and of the said Queen the said crown and regall government should be and remain to the heirs of the body of the said late Queen and for default of such issue to her royall Highness the Princess Ann of Denmark and the heirs of her body and for default of such issue to the heirs of the body of your Majesty And it was thereby further enacted that all and every person and persons that then were or afterwards should be reconciled to or shall hold communion with the see or church of Rome or should professe the popish religion or marry a papist should be excluded and are by that Act made for ever incapable to inherit possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same or to have use or exercise any regall power authority or jurisdiction within the same and in all and every such case and

[3] Annexed to the original Act in a separate schedule.

[4] Redundant words of enactment and a phrase the effect of which is spent are omitted.

cases the people of these realms shall be and are thereby absolved of their allegiance and that the said crown and government shall from time to time descend to and be enjoyed by such person or persons being protestants as should have inherited and enjoyed the same in case the said person or persons so reconciled holding communion professing or marrying as aforesaid were naturally dead. After the making of which Statute and the settlement therein contained your Majesties good subjects who were restored to the full and free possession and enjoyment of their [religion[1]] rights and liberties by the providence of God giving success to your Majesties just undertakings and unwearied endeavours for that purpose had no greater temporall felicity to hope or wish for then to see a royall progeny descending from your Majesty to whom (under God) they owe their tranquility and whose ancestors have for many years been principall assertors of the reformed religion and the liberties of [Europe[1]] and from our said most gracious sovereign lady whose memory will always be precious to the subjects of these realms And it having since pleased Almighty God to take away our said sovereign lady and also the most hopefull Prince William Duke of Gloucester (the only surviving issue of her royall Highness the Princess Ann of Denmark) to the unspeakable grief and sorrow of your Majesty and your said good subjects who under such losses being sensibly put in mind that it standeth wholly in the pleasure of Almighty God to prolong the lives of your Majesty and of her royall Highness and to grant your Majesty or to her royall Highness such issue as may be inheritable to the crown and regall government aforesaid by the respective limitations in the said recited Act contained doe constanly implore the divine mercy for those blessings And your Majesties said subjects having daily experience of your royall care and concern for the present and future welfare of these kingdoms and particularly recommending from your throne a further provision to be made for the succession of the crown in the protestant line for the happiness of the nation and the security of our religion and it being absolutely necessary for the safety peace and quiet of this [realm[1]] to obviate all doubts and contentions in the same by reason of any pretended titles to the [crown[1]] and to maintain a certainty in the succession thereof to which your subjects may safely have recourse for their protection in case the limitations in the said recited [Act[1]] should determine Therefore for a further provision of the succession of the crown in the protestant line we your Majesties most dutifull and loyal subjects the lords spirituall and temporall and commons in this present Parliament assembled do beseech your Majesty that it may be enacted and declared and be it enacted and declared by the Kings most excellent Majesty by and with the advice and consent of the lords spirituall and temporall and cõmons in this present Parliament assembled and by the authority of the same that

1 The Princess Sophia, Electress and Duchess dowager of Hanover, daughter of the late Queen of Bohemia, daughter of King James the First, to inherit after the King and the Princess Anne, in default of

[1] Interlined on the roll.

issue of the said princess and his Majesty, respectively; and the heirs of her body, being protestants

The most excellent Princess Sophia Electress and Dutchess dowager of Hanover daughter of the most excellent Princess Elizabeth late Queen of Bohemia daughter of our late sovereign lord King James the First of happy memory be and is hereby declared to be the next in succession in the protestant line to the imperiall crown and dignity of the [said[1]] realms of England France and Ireland with the dominions and territories thereunto belonging after his Majesty and the Princess Ann of Denmark and in default of issue of the said Princess Ann and of his Majesty respectively and that from and after the deceases of his said Majesty our now sovereign lord and of her royall Highness the Princess Ann of Denmark and for default of issue of the said Princess Ann and of his Majesty respectively the crown and regall government of the said kingdoms of England France and Ireland and of the dominions thereunto belonging with the royall state and dignity of the said realms and all honours stiles titles regalities preogatives powers jurisdictions and authorities to the same belonging and appertaining shall be remain and continue to the said most excellent Princess Sophia and the heirs of heir body being protestants And thereunto the said lords spirituall and temporall and commons shall and will in the name of all the people of this realm most humbly and faithfully submitt themselves their heirs and posterities and do faithfully promise that after the deceases of his Majesty and her royall Highness and the failure of the heirs of their respective bodies to stand to maintain and defend the said Princess Sophia and the heirs of her body being [protestants[1]] according to the limitation and succession of the crown in this Act specified and contained to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt any thing to the contrary.

2 The persons inheritable by this Act, holding communion with the church of Rome, incapacitated as by the former Act; to take the oath at their coronation, according to Stat 1 W & M c 6

PROVIDED always and it is hereby enacted that all and every person and persons who shall or may take or inherit the said crown by vertue of the limitation of this present Act and is are or shall be reconciled to or shall hold communion with the see or church of Rome or shall profess the popish religion or shall marry a papist shall be subject to such incapacities as in such case or cases are by the said recited Act provided enacted and established. And that every King and Queen of this realm who shall come to and succeed in the imperiall crown of this kingdom by vertue of this Act shall have the coronation oath administred to him her or them at their respective coronations according to the Act of Parliament made in the first year of the reign of his Majesty and the said late Queen Mary intituled An Act for establishing the coronation oath and shall make subscribe and repeat the declaration in the Act first above recited mentioned or referred to in the manner and form thereby prescribed

[1] Interlined on the roll

3 Further provisions for securing the religions, laws, and liberties of these realms

And whereas it is requisite and necessary that some further provision be made for securing our religion laws and liberties from and after the death of his Majesty and the Princess Ann of Denmark and in default of issue of the body of the said princess and of his Majesty respectively Be it enacted by the Kings most excellent Majesty by and with the advice and consent of the lords spirituall and temporall and commons in Parliament assembled and by the authority of the same

That whosoever shall hereafter come to the possession of this crown shall joyn in communion with the Church of England as by law established

ROYAL MARRIAGES ACT 1772

(12 Geo 3 c 11)

An Act for the better regulating the future Marriages of the Royal Family

[1] No descendant of his late Majesty Geo 2 (other than the issue of princesses married, or who may marry, into foreign families) shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs, etc, signified under the great seal, declared in council, and entered in the Privy Council books. Marriage of any such descendant, without such consent, to be void

No descendant of the body of his late Majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families,) shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs or successors, signified under the great seal, and declared in council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the Privy Council); and that every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void to all intents and purposes whatsoever.

2 If any such descendant, above twenty-five years old, shall persist to contract a marriage without such consent, such descendant, after twelve months notice to Privy Council, may contract such marriage, which shall be good, unless both Houses of Parliament shall disapprove

PROVIDED always that in case any such descendant of the body of his late Majesty King George the Second, being above the age of twenty-five years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the King, his heirs or successors; that then such descendant, upon giving notice to the King's Privy Council, which notice is hereby directed to be entered in the books thereof, may, at any time from the expiration of

twelve calendar months after such notice given to the Privy Council as aforesaid, contract such marriage; and his or her marriage with the person before proposed and rejected, may be duly solemnized, without the previous consent of his Majesty, his heirs or successors; and such marriage shall be good, as if this Act had never been made, unless both Houses of Parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage.

ACCESSION DECLARATION ACT 1910
(10 Edw 7 & 1 Geo 5 c 29)

An Act to alter the form of the Declaration required to be made by the Sovereign on Accession

[3 August 1910]

1 Alteration of form of accession declaration

The declaration to be made, subscribed, and audibly repeated by the Sovereign under section one of the Bill of Rights and section two of the Act of Settlement shall be that set out in the Schedule to this Act instead of that referred to in the said sections.

2 Short title

This Act may be cited as the Accession Declaration Act 1910.

SCHEDULE

I [*here insert the name of the Sovereign*] do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my powers according to law.

THE HABEAS CORPUS ACT 1640

(16 Car. 1 c. 10)

6. Every person committed contrary to this Act shall have an habeas corpus for the ordinary fees

AND if any person shall hereafter be committed restrained of his libertie or suffer imprisonment [by the order or decree of any such Court of Star Chamber or other court aforesaid now or at any time hereafter having or ꝑtending to have the same or like jurisdiction power or authoritie to commit or imprison as aforesaid or by the command or warrant of the Kings Majestie his heires or successors in theire owne person or by the command or warrant of the councell board or of any of the lords or others of his Majesties privy councell[1]] that in every such case every person so committed restrained of his libertie or suffering imprisonment upon demand or motion made by his councell or other imployed by him for that purpose unto the judges of the Court of Kings Bench or Common Pleas in open court shall without delay upon any pretence whatsoever for the ordinary fees usually paid for the same have forthwith granted unto him a writ of habeas corpus to be directed generally unto all and every sheriffs gaoler minister officer or other person in whose custody the party committed or restrained shall be [and the sheriffs gaoler minister officer or other ꝑson in whose custody the ꝑty so committed or restrained shall be[2]] shall at the return of the said writ & according to the command thereof upon due and convenient notice thereof given unto him [at the charge of the party who requireth or procureth such writ and upon securitie by his owne bond given to pay the charge of carrying back the prisoner if he shall be remanded by the court to which he shall be brought as in like cases hath beene used such charges of bringing up and carrying backe the prisoner to be alwaies ordered by the court if any difference shall arise thereabout[1]] bring or cause to be brought the body of the said party so committed or restrained unto and before the judges or justices of the said court from whence the same writ shall issue in open court and shall then likewise certifie the true cause of such his deteinor or imprisonment and thereupon the court within three court dayes after such return made and delivered in open court shall proceed to examine and determine whether the cause of such commitment appearing upon the said return be just and legall or not and shall thereupon do what to justice shall appertaine either by delivering bailing or remanding the prisoner and if any thing shall be otherwise wilfully done or omitted to be done by any judge justice officer or other person aforementioned contrary to the direction and true meaning hereof that then such person so offending shall forfeit to the party grieved his trebble damages to be recovered by such meanes and in such manner as is formerly in this Act limited and appointed for the like penaltie to be sued for and recovered.

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[1] Annexed to the original Act in a separate schedule.

[2] Interlined on the roll.

THE HABEAS CORPUS ACT 1679
(31 Car. 2 c. 2)

AN ACT for the better secureing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas.

WHEREAS great delayes have beene used by sheriffes gaolers and other officers to whose custody any of the Kings subjects have beene committed for criminall or supposed criminall matters in makeing returnes of writts of habeas corpus to them directed by standing out an alias and pluries habeas corpus and sometimes more and by other shifts to avoid their yeilding obedience to such writts contrary to their duty and the knowne lawes of the land whereby many of the Kings subjects have beene and hereafter may be long detained in prison in such cases where by law they are baylable to their great charge and vexation. For the prevention whereof and the more speedy releife of all persons imprisoned for any such criminall or supposed criminall matters bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the lords spirituall and temporall and commons in this present Parlyament assembled and by the authoritie thereof that

[1.] Sheriff, etc., within three days after service of habeas corpus, with the exception of treason and felony, as and under the regulations herein mentioned, to bring up the body before the court to which the writ is returnable; and certify the true causes of imprisonment

whensoever any person or persons shall bring any habeas corpus directed unto any sheriffe or sheriffes goaler minister or other person whatsoever for any person in his or their custody and the said writt shall be served upon the said officer or left at the goale or prison with any of the under officers underkeepers or deputy of the said officers or keepers that the said officer or officers his or their under officers under-keepers or deputyes shall within three dayes after the service thereof as aforesaid (unlesse the committment aforesaid were for treason or fellony plainely and specially expressed in the warrant of committment) [upon payment or tender of the charges of bringing the said prissoner to be ascertained by the judge or court that awarded the same and endorsed upon the said writt not exceeding twelve pence per mile[1]] and upon security given by his owne bond to pay the charges of carrying backe the prisoner if he shall bee remanded by the court or judge to which he shall be brought according to the true intent of this present Act and that he will not make any escape by the way make returne of such writt or bring or cause to be brought the body of the partie soe committed or restrained unto or before the lord chauncelior or lord keeper of the great seale of England for the time being or the judges or barons of the said court from whence the said writt shall issue or unto and before such other person and persons before whome the said writt is made returnable according to the command thereof, and shall likewise then certifie the true causes of his detainer or imprisonment unlesse the committment of the said partie be in any place beyond the distance of twenty miles from the place or places where such court or person is or

[1] Annexed to the original Act in a separate schedule.

shall be resideing and if beyond the distance of twenty miles and not above one hundred miles then within the space of ten dayes and if beyond the distance of one hundred miles then within the space of twenty dayes after such delivery aforesaid and not longer.

2. How writs to be marked—Persons committed, except for treason and felony, etc., may appeal to the lord chancellor, etc.—Habeas corpus may be awarded; and upon service thereof the officer to bring up the prisoners as before mentioned; and thereupon within two days lord chancellor, etc., may discharge upon recognizance; and certify the writ with the return and recognizance—Proviso for process not bailable

[AND to the intent that noe sheriffe goaler or other officer may pretend ignorance of the import of any such writt bee it enacted by the authoritie aforesaid that all such writts shall be marked in this manner Per statutum tricesimo primo Caroli Secundi Regis and shall be signed by the person that awards the same[1]] And if any person or persons shall be or stand committed or detained as aforesaid for any crime unlesse for treason or fellony plainely expressed in the warrant of committment in the vacation time and out of terme it shall and may be lawfull to and for the person or persons soe committed or detained (other then persons convict or in execution) by legall processe or any one in his or their behalfe to appeale or complaine to the lord chauncellour or lord keeper or any one of his Majestyes justices either of the one bench or of the other or the barons of the Exchequer of the degree of the coife and the said lord chauncellor lord keeper justices or barons or any of them upon view of the copy or copies of the warrant or warrants of committment and detainer or otherwise upon oath made that such copy or copyes were denyed to be given by such person or persons in whose custody the prisoner or prisoners is or are detained are hereby authorized and required [upon request made in writeing by such person or persons or any on his her or their behalfe attested and subscribed by two witnesses that were present at the delivery of the same[1]] to award and grant an habeas corpus under the seale of such court whereof he shall then be one of the judges to be directed to the officer or officers in whose custodie the party soe committed or detained shall be returnable immediate before the said [lord chauncellor or[2]] lord keeper or such justice baron or any other justice or baron of the degree of the coife of any of the said courts and upon service thereof as aforesaid the officer or officers his or their under-officer or under officers under keeper or under keepers or their deputy in whose custodie the partie is soe committed or detained shall within the times respectively before limitted [bring such prisoner or prisoners[2]] before the ŝd lord chauncellor or lord keeper or such justices barons or one of them [before whome the said writt is made returnable and in case of his absence before any of them[1]] with the returne of such writt and the true causes of the committment and detainer and thereupon within two dayes after the partie shall be brought before them the said lord chauncellor or lord keeper or such justice or baron before whome the prisoner shall be brought as aforesaid shall discharge the said

[1] Annexed to the original Act in a separate schedule.

[2] Interlined on the roll.

prisoner from his imprisonment takeing his or their recognizance with one or more suretie or sureties in any summe according to their discretions haveing reguard to the quality of the prisoner and nature of the offence for his or their appearance in the Court of Kings Bench the terme following or at the next assizes sessions or generall goale-delivery of and for such county city or place where the committment was or where the offence was committed or in such other court where the said offence is properly cognizable as the case shall require and then shall certifie the said writt with the returne thereof and the said recognizance or recognizances into the said court where such appearance is to be made unlesse it shall appeare unto the said lord chauncellor or lord keeper or justice or justices or baron or barons that the party soe committed is detained upon a legall processe order or warrant out of some court that hath jurisdiction of criminall matters or by some warrant signed and sealed with the hand and seale of any of the said justices or barons or some justice or justices of the peace for such matters or offences for the which by the law the prisoner is not baileable.

3. Habeas corpus not granted in vacation to prisoners who have neglected to pray the same

[PROVIDED alwayes and bee it enacted that if any person shall have wilfully neglected by the space of two whole termes after his imprisonment to pray a habeas corpus for his enlargement such person soe wilfully neglecting shall not have any habeas corpus to be granted in vacation time in pursuance of this Act.[1]]

4. Officer neglecting, etc., to make the said returns, etc., or upon demand to deliver a copy of warrant of commitment; first offence, penalty £100, second offence, £200 and incapacity—Judgment at suit of party sufficient conviction

AND if any officer or officers his or their under-officer or under-officers under-keeper or under-keepers or deputy shall neglect or refuse to make the returnes aforesaid or to bring the body or bodies of the prisoner or prisoners according to the command of the said writt within the respective times aforesaid or upon demand made by the prisoner or person in his behalfe shall refuse to deliver or within the space of six houres after demand shall not deliver to the person soe demanding a true copy of the warrant or warrants of committment and detayner of such prisoner, which he and they are hereby required to deliver accordingly all and every the head goalers and keepers of such prisons and such other person in whose custodie the prisoner shall be detained shall for the first offence forfeite to the prisoner or partie grieved the summe of one hundred pounds and for the second offence the summe of two hundred pounds and shall and is hereby made incapeable to hold or execute his said office, the said penalties to be recovered by the prisoner or partie grieved his executors or administrators against such offender his executors or administrators by any action of debt suite bill plaint or information in any of the Kings courts at Westminster wherein noe essoigne protection priviledge injunction wager of law or stay of prosecution by non vult ulterius prosequi or

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[1] Annexed to the original Act in a separate schedule.

otherwise shall bee admitted or allowed or any more then one imparlance, and any recovery or judgement at the suite of any partie grieved shall be a sufficient conviction for the first offence and any after recovery or judgement at the suite of a partie grieved for any offence after the first judgement shall bee a sufficient conviction to bring the officers or person within the said penaltie for the second offence.

5. Proviso as to imprisonment of party after having been set at large upon habeas corpus—Unduly recommitting such discharged persons or assisting therein; penalty to the party, £500

AND for the prevention of unjust vexation by reiterated committments for the same offence bee it enacted by the authoritie aforesaid that noe person or persons which shall be delivered or sett at large upon any habeas corpus shall at any time hereafter bee againe imprisoned or committed for the same offence by any person or persons whatsoever other then by the legall order and processe of such court wherein he or they shall be bound by recognizance to appeare or other court haveing jurisdiction of the cause and if any other person or persons shall knowingly contrary to this Act recommitt or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence any person or persons delivered or sett at large as aforesaid or be knowingly aiding or assisting therein then he or they shall forfeite to the prisoner or party grieved the summe of five hundred pounds any colourable pretence or variation in the warrant or warrants of committment notwithstanding to be recovered as aforesaid.

7. Proviso respecting persons charged in debt, etc.

[PROVIDED alwayes that nothing in this Act shall extend to discharge out of prison any person charged in debt or other action or with processe in any civill cause but that after he shall be discharged of his imprisonment for such his criminall offence he shall be kept in custodie according to law for such other suite.[1]]

8. Persons committed for criminal matter not to be removed but by habeas corpus or other legal writ—Unduly making out, etc., warrant for removal; penalty

PROVIDED alwaies that if any person or persons subject of this realme shall be committed to [any[2]] prison or in custodie of any officer or officers whatsoever for any criminall or supposed criminall matter that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers unlesse it be by habeas corpus or some other legall writt or where the prisoner is delivered to the constable or other inferiour officer to carry such prisoner to some common goale [or where any person is sent by order of any judge of assize or justice of the peace to any common worke-house or house of correction or where the prisoner is removed from one prison or place to another within the same county in order to his or her tryall or discharge in due course of law or in case of suddaine fire or infection or other necessity[1]]

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[1] Annexed to the original Act in a separate schedule.

[2] Interlined on the roll.

and if any person or persons shall after such committment aforesaid make out and signe or countersigne any warrant or warrants for such removeall aforesaid contrary to this Act as well he that makes or signes or countersignes such warrant or warrants as the officer or officers that obey or execute the same shall suffer and incurr the paines and forfeitures in this Act before-mentioned both for the first and second offence respectively to be recovered in manner aforesaid by the partie grieved.

9. Proviso for application for and granting habeas corpus in vacation time—Lord chancellor, etc., unduly denying writ; penalty to party, £500

PROVIDED alsoe that it shall and may be lawfull to and for any prisoner and prisoners as aforesaid to move and obtaine his or their habeas corpus as well out of the High Court of Chauncery or Court of Exchequer as out of the courts of Kings Bench or Common Pleas or either of them and if the said lord chauncellor or lord keeper or any judge or judges baron or barons for the time being of the degree of the coife of any of the courts aforesaid in the vacation time upon view of the copy or copies of the warrant or warrants of committment or detainer or upon oath made that such copy or copyes were denyed as aforesaid shall deny any writt of habeas corpus by this Act required to be granted being moved for as aforesaid they shall severally forfeite to the prisoner or partie grieved the summe of five hundred pounds to be recovered in manner aforesaid.

10. Habeas corpus may be directed into counties palatine, etc.

AND an habeas corpus according to the true intent and meaning of this Act may be directed and runn into any county palatine the cinque ports or other priviledged places within the kingdome of England dominion of Wales or towne of Berwicke upon Tweede and the islands of Jersey or Guernsey any law or usage to the contrary notwithstanding.

11. No subject to be sent prisoner into Scotland, etc., or any parts beyond the seas—Persons so imprisoned may maintain action against the person committing or otherwise acting in respect thereof, as herein mentioned; treble costs and damages; and the person so committing or acting disabled from office, and incur premunire, and be incapable of pardon

AND for preventing illegall imprisonments in prisons beyond the seas bee it further enacted by the authoritie aforesaid that noe subject of this realme that now is or hereafter shall be an inhabitant or resiant of this kingdome of England dominion of Wales or towne of Berwicke upon Tweede shall or may be sent prisoner into Scotland Ireland Jersey Gaurnsey Tangeir or into any parts garrisons islands or places beyond the seas which are or at any time hereafter [shall be[2]] within or without the dominions of his Majestie his heires or successors and that every such imprisonment is hereby enacted and adjudged to be illegall and that if any of the said subjects now is or hereafter shall bee soe imprisoned [every such person and persons soe imprisoned[2]] shall and may for every such imprisonment maintaine by vertue of this Act an action or

[2] Interlined on the roll.

actions of false imprisonment in any of his Majestyes courts of record against the person or persons by whome he or she shall be soe committed detained imprisoned sent prisoner or transported contrary to the true meaning of this Act and against all or any person or persons that shall frame contrive write seale or countersigne any warrant or writeing for such committment detainer imprisonment or transportation or shall be adviseing aiding or assisting in the same or any of them and the plaintiffe in every such action shall have judgement to recover his treble costs besides damages which damages soe to be given shall not be lesse than five hundred pounds in which action noe delay stay or stopp of proceeding by rule order or command nor noe injunction protection or priviledge whatsoever nor any more then one imparlance shall be allowed [excepting such rule of the court wherein the action shall depend made in open court as shall bee thought in justice necessary for speciall cause to be expressed in the said rule[1]] and the person or persons who shall knowingly frame contrive write seale or countersigne any warrant for such committment detainer or transportation or shall soe committ detaine imprison or transport any person or persons contrary to this Act or be any wayes adviseing aiding or assisting therein being lawfully convicted thereof shall be disabled from thenceforth to beare any office of trust or proffitt within the said realme of England dominion of Wales or towne of Berwicke upon Tweede or any of the islands territories or dominions thereunto belonging and shall incurr and sustaine the paines penalties and forfeitures limitted ordained and provided in the Statute of provision and premunire made in the sixteenth yeare of King Richard the Second and be incapeable of any pardon from the King his heires or successors of the said forfeitures losses or disabilities or any of them.

HABEAS CORPUS ACT 1816

(56 Geo 3 c 100)

1 Judges to issue, in vacation, writs of habeas corpus returnable immediately, in cases other than for criminal matter, or for debt, or on civil process

Where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within that part of Great Britain called England, dominion of Wales, or town of Berwick-upon-Tweed or the Isles of Jersey, Guernsey, or Man, it shall and may be lawful for any one of the barons of the Exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other, and where any person shall be so confined in Ireland, it shall and may be lawful for any one of the barons of the Exchequer, or of the justices of one bench or the other in Ireland, and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a

[1] Annexed to the original Act in a separate schedule.

probable and reasonable ground for such complaint, to award in vacation time a writ of habeas corpus ad subjiciendum, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or persons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued.

2 Non-obedience to such writ to be a contempt of court, and punishable accordingly—Judges to make writs of habeas corpus, issued late in vacation, returnable in court in the next term—Courts to make writs issued late in term returnable in vacation

If the person or persons to whom any writ of habeas corpus shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or restrained with any servant or agent of the person or persons so confining or restraining, shall wilfully neglect or refuse to make a return or pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal for the apprehending and bringing before him, or before some other justice or baron of the same court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing to the jail or prison of the court of which such justice or baron shall be a judge, there to remain until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the court in term time, or by order of one of the justices or barons of the court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the court to be discharged: Provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said court: Provided also, that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said countries respectively, which last-mentioned court shall have like power to award such

writs as the respective courts of King's Bench and Common Pleas in each of the said countries now have, in term, but so late that, in the judgment of the court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in Ireland, before any justice or baron of the same court, who shall and may proceed thereupon, in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

3 The judge shall inquire into the truth of facts set forth in return; and where it appears doubtful shall bail the person confined on recognizance to appear in term, etc.

In all cases provided for by this Act, although the return to any writ of habeas corpus shall be good and sufficient in law, it shall be lawful for the justice or baron, before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return by affidavit or by affirmation (in cases where an affirmation is allowed by law), and to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return or any of them be true or not, in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the court of which the said justice or baron shall be a justice or baron upon a day certain in the term following, and so from day to day as the court shall require, and to abide such order as the court shall make in and concerning the premises; and such justice or baron shall transmit into the same court the said writ and return, together with such recognizance, affidavits, and affirmations; and thereupon it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the party.

4 The truth of the return may be controverted in that court

The like proceeding may be had in the court for controverting the truth of the return to any such writ of habeas corpus awarded as aforesaid, although such writ shall be awarded by the said court itself, or be returnable therein.

5 Writ may run into counties palatine, cinque ports, and other privileged places, etc

A writ of habeas corpus, according to the true intent and meaning of this Act, may be directed and run into any county palatine or cinque port, or any other privileged place within that part of Great Britain called England, dominion of Wales, and town of Berwick-upon-Tweed, and the Isles of Jersey, Guernsey, and Man, respectively; and also into any port, harbour, road, creek, or bay, upon the coast of England or Wales, although the same should lie out of the body of any county; and if such writ shall issue in Ireland, the same may be directed and run into any port, harbour,

road, creek, or bay, although the same should not be in the body of any county; any law or usage to the contrary in anywise notwithstanding.

6 Provisions of this Act to extend to all writs of habeas corpus in cases within 31 Cha 2 c 2, and Irish Act, 21 & 22 Geo 3 c 11

The several provisions made in this Act, touching the making writs of habeas corpus issuing in time of vacation returnable into the said courts, or for making such writs awarded in term time returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ, and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail as aforesaid respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of habeas corpus awarded in pursuance of the said Act passed in England in the thirty-first year of the reign of King Charles the Second, or of the said Act passed in Ireland in the twenty-first and twenty-second years of his present Majesty, and herein-before recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been herein-before specially named and provided for respectively.

THE STATUTE OF MARLBOROUGH 1267
(52 HENRY 3.)

23. Fermors shall do no waste.

Also fermors, during their terms, shall not make waste, sale, nor exile of house, woods, men, nor of any thing belonging to the tenements that they have to ferm, without special licence had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amerciament grievously.

QUIA EMPTORES 1289-90
(18 EDWARD 1.)

A STATUTE of our LORD THE KING, *concerning the Selling and Buying of Land.*

1. Freeholders may sell their lands, so that the feoffee do hold of the chief lord.

FORASMUCH as purchasers of lands and tenements of the fees of great men and [other lords,[1]] have many times heretofore entered into their fees, to the prejudice of the lords, [to whom[2]] the freeholders of such great men[3] have sold their lands and tenements to be holden in fee[4] of their feoffors, and not of the chief lords of the fees, whereby the same chief lords have many times lost their escheats, marriages, and wardships of lands and tenements belonging to their fees; which thing seemed very hard and extream unto those [lords and other great men[5]] and moreover in this case manifest disheritance: Our lord the King, in his Parliament at Westminster after Easter, the eighteenth year of his reign, that is to wit, in the quinzime of Saint John Baptist, at the instance of the great men of the realm, granted, provided, and ordained, that from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them; so that the feoffee shall hold the same lands or tenements of the [chief lord of the same fee, by such service[6]] and customs as his feoffor held before.

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[1] others

[2] to which purchasers

[3] and others

[4] to them and their heirs

[5] great men and other lords

[6] same chief lord, and by the same services

PARTITION ACT 1539
(31 HENRY 8. c. 1.)

1. Inconveniences resulting from joint tenancy &c. undivided. Joint tenants in common shall be compellable to make partition in like manner as coparceners.

FORASMUCHE as by the comen lawes of this realme, dyvse of the Kinge subjecte being seised of mannors landes teñtes & hereditamente as joynt tenantes or as tenantes in comen with other, of any estate of enheritaunce, in their own righte or in the right of their wyffes, by purchase discent or otherwise, and evy of them so being joynt tenantes or tenantes in comen hathe like righte title interest and possession in the same mannors landes teñtes and hereditamente for their parte or porcons joyntlye or in comen undevydedlye togethe withe other, and none of them by the lawe doeth or maye knowe their sevall partes or porcons in the same, or that that ys his or theirs by hit selfe undevyded, and cannot by the lawes of this realme otherwise occupye or take the pfytt of the same, or make any severans division or partic̃on thereof, without either of their mutuall consentes and assente; by reason whereof dyvse and many of them, beinge so joyntly and undevidedly seised of the saide mannors landes teñte & hereditamente, often tymes of their perverse covetous and malicious myndes and willes, ayens all right justice equitie and good conscience by strenghe and power, hath not onlye cutt and fallen downe all the woodes and trees growinge uppon the same, but also hathe extirped subverted pulled downe and distroyed all the houses [edificyons[1]] and buyldynge meadowes pastures cōmens and the hoole cōmodities of the same, and hath taken and converted them to their owne uses and behoofffe, to the open wronge & disberison & ayens the myndes and willes of other holdinge the same mannors landes teñte & hereditamente joyntlye or in cōmen withe them, and they have bene alwaies without assured remedy for the same; be it therefore enacted by the Kinge our most drede soveraigne lorde and by thassent of his lordes spuall and temporall and by the cōmons in this psent Parliament assembled, that all joyntten[a]nte and ten[a]ntes in cōmen, that nowe be or hereafter shalbe of enny estate or estates of enheritaunce in their owne righte or in the righte of their wyffes, of any manners landes teñte or hereditamentes within this realme of Englande Wales or the mersches of the same, shall and maye be coacted and compelled by vertue of this psent Acte, to make ptic̃on betwene them of all suche mannors landes teñtes and hereditamente as they nowe holde or hereafter shall holde as joyntten[a]nte or ten[a]ntes in cōmen, by writt de [ptic̃oe[2]] faciend, in that case to be devised in the Kinge our sovaigne lordes Court of Chauncerie, in like manner and forme coperceners by the comen lawes of this realme have byne and are compellable to doe, and the same writt to be pursued at the cōmen lawe.

2. After partition each shall have aid of the other.

PROVIDED alwaye that evye of the saide joyntten[a]nte or ten[a]ntes in cōmen and their heires after suche partic̃on made, shall and may have ayde of the other, or of their heires, to thentent to deraigne the warrantye pamounte and to recover for the rate as is used

[1] So also in the original Act. *Printed copies* read 'edifices'.

[2] pticipac̃one *O.*

betwene copceners after ptiçon made by the order of the comen lawe; any thinge in this Acte conteyned to the contrie notwithstandinge.

PARTITION ACT 1540

(32 Hen. 8, c. 32)

[1] Partition Act 1539 for partition by joint-tenants, &c. extended to persons having particular estates for life or years. Joint-tenants and tenants in common shall be compellable to make partition in like manner as coparnerners.

FORASMUCHE as in the Plament begon at Westm the xxviij^th^ day of Aprill and there contynued till the xxviij^th^ day of June the xxxj yere of the Kinges mooste noble and victoriouse reigne that nowe is, it was amongest other thinges there enacted and established that all joyncte tenantis and tenantis in cõmon that then were or heraftre shulde be of anny estate or estatis of inheritaunce, in their owne rightis or in the right of their wifes, of anny mannours landis tenementis or hereditamentis within this realme of England Wales or marches of the same, shall and may be coacted and compellid by vertue of the said Acte to make partition betwene them of all suche mannours landis teñtis and hereditamentis as they then holde or herafter shulde holde as joynte tenantis or tenantis in cõen; as more at large apperith by the said estatute: And forasmuche as the said estatute dothe not extende to joyncte tenantis or tenantis in cõmon for terme of life or yeris, nother to joyncte tenantis or tenantis in cõmon where one or some of them have but a pticulier estate for terme of life or yeris and thother have estate or estatis of inheritaunce of and in any mannours landis tenementis and hereditat; be it therefore enacted by the Kinge our souvaine lorde and by thassent of his lordis spuall and temporall and the comons in this psent Plament assembled and by thauctoritie of the same, that all joynct tenantis and tenauntis in cõmen and evy of them, whiche nowe hold or herafter shalholde joynctly or in cõmon for terme of life yere or yeres, or joyncteten antis or tenantis in cõmon where one or some of them have or shalhave estate or estatis for terme of life or yeris with thother that have or shalhave estate or estatis of inheritaunce or freeholde, in any manours landes teñtis or hereditamentis, shall and may be compellable from hensfurth, by writte of partition to be pursued out of the Kinges Courtis of Chauncery uppon his or their cace or caces, to make severaunce and partition of all suche manours landis tenementis and hereditamentis whiche they holde joynctely or in cõmon for terme of lyf or lifes yere or yeris, where one or sõme of them holde joynctly or in cõmon for terme of life or yeris with other, or that have an estate or estatis of inheritaunce or freeholde.

2. Such partition shall not prejudice others, not parties.

PROVIDED alway and be it enacted that no suche ptition nor severaunce hereafter to be made by force of this Acte be nor shalbe prejudiciall or hurtefull to anny psonne or psonnes their heirs or

successours other than suche whiche be parties unto the said partition their executors or assigneis.

GRANTEES OF REVERSIONS ACT 1540
(32 Hen. 8, c. 34)

[1] Covenants in leases, &c. not available, by common law, except to parties or privies thereto; grantees of the lands of religious houses dissolved and all grantees of reversions in lands &c. shall have advantage of all covenants against the lessees of such land.

WHERE bifore this tyme divers, aswell temporall as ecclesiasticall and religiouse psonnes, have made sundry leases demyses and grauntis to divers other psones of sundry manours lordshipps fermes meases landis tenementis medowes pastures or other hereditamentis for terme of life or lifes or for terme of yeres, by writing undre their seale or sealis conteyning certain conditions covenantis and agreamentis to be pfourmed as well on the parte and bihalfe of the said [leases and grauntis[1]] their executours and assigneis, as on the behalf of the said lessours and grantours their heirs and successours; and forasmuche as by the cõmon lawe of this realme no straunger to any convenant action or condition shall take any advantage or benefite of the same by any meanes or wayes in the lawe, but onely suche as be parties or prives therunto, by the reason wherof as well all graunties of reversions as also all grauntees and [patentis[2]] of the King our souvaine lorde of sundrie manours lordeships graunges fermes meases landis tenementis medowes pastures or other hereditamentis, late bilonging to monasteries and other religiouse and eccliasticall houses dissolved suppressid renouncid relinquished forfaicted geven up or by other meanes cõme to thandis and possession of the Kingꝯ Majesty syns the fourth day of February the xxvijth yere of his mooste noble reigne, be excluded to have any entree or action against the said lessees and grauntees their executours or assigneis whiche the lessours bifore that tyme mought by the lawe have had against the same lessees for the breache of any condition covenant or agreament comprisid in the indentures of their said lesses dimises and grauntes: Be it therefore enacted by the Kinge our souvaine lorde the lordes sp̃uall and temporall and the commons in this present Plament assembled and by auctoritie of the sam̃, that aswell all and evy psonne & psones and bodies politike their heires successours and assigneis, whiche have or shalhave any gifte or graunte of our said souveraine lorde by his tres patentis of anny lordeships mannours landis teñtis rentis psonnages tithes portions or any other hereditaments, or of anny reversion or reversions of the same, whiche did bilonge and apptaine to any of the said monasteries and other religiouse and eccliasticall houses dissolved suppressid relinquished forfaicted or by any other meanes cõme to the Kinges handes syns the said iiijth day of February the xxvij yere of his moost noble reigne, or whiche at any tyme heretofore did

[1] Lessees & graunties.

[2] Patentyes.

bilonge or appertayne to any other psone or psonnes and aftre came to thandis of our said souveraine lorde, as also all other psonnes being grauntees or assigneis to or by our said soveraine lorde the King, or to or by any other psonne or psonnes than the Kingꝯ Highnes, and theires executours successours and assignes of everie of them, shall and may have and enjoye like advᵃntage against the lessees their executours administratours and assigneis, by entree for none payment of the rent or for doing of wast or other forfaicture, and also shall and may have and enjoye all and every suche like and the same advᵃntage benefite and remedyes by action onely for not pfourmyng of other conditions convenᵃntis or agreamentis conteynid and expressid in the endentures of their said leases dymyses or grauntes, against all and eu̯y the said lessees and fermours and graunties their executours administratours and assigneis, as the said lessours or grantours them selfis or their heires or successours ought shuld or might have had and enjoyed at any tyme or tymes, in like maner and fourme as if the reversion of suche landis tenementis or hereditamētꝯ had not cōme to thaudis of our said souu̯aine lorde, or as our said souveraine lorde his heires and successours shuld or might have had and enjoyed in certaine cases by vertue of Thacte made at the first cession of this þsent Plament if no suche grᵃnte by ſres patentes had ben made by his Highnes.

2. Lessees may have an action of covenant, &c. against such grantees.

MOREOV all fermours lessees and grantees of lordeshipps manours landis tenementis rentis psonnages tithes portions or anny other hereditamentis for terme of yeres life or lyfes their executours administratours and assigneis, shall and may have like action avᵃntage and remedy againste all and everie psonne and psonnes and bodies politike their heires successours and assigneis, whiche have or shalhave any gifte or graunte of our souveraine lorde the Kinge or of anny other psonne or psonnes of the reu̯sion of the same manours landis teñtis and other hereditamentis so letten or any pcell therof, for any condition covenᵃnt or agreament conteynid or expressid in the indenturꝯ of their leasse and leasses as the same leases or anny of them might and shulde have had against their said leassours and grᵃuntours their heires or successours; all benefites and advᵃntages of recoveres by reason of anny warraunty in deede or in lawe by voucher or otherwise onely exceptid.

DISTRESS ACT 1689

(2 Will. and Mar. sess.1, c.5)

AN ACT *for enabling the Sale of Goods distrained for Rent in case the Rent be not paid in a reasonable time.*

[1] WHEREAS the most ordinary and ready way for recovery of arrears of rent is by distresse yet such distresses not being to be sold but onely detained as pledges for inforceing the payment of such rent the persons distraining have little benefit thereby For the remedying whereof bee it enacted and ordained by the King and Queens most excellent Majestyes by and with the advice and consent of the lords spirituall and temporall and commons in this present Parlyament assembled and by authoritie of the same that from and after the first day of June in the yeare of our Lord one thousand six hundred and ninety that where any goods or chattells shall be distrained for any rent reserved and due upon any demise lease or contract whatsoever and the tenant or owner of the goods soe distrained shall not within five dayes [next[1]] after such distresse taken and notice thereof (with the cause of such takeing) left at the chiefe mansion house or other most notorious place on the premisses charged with the rent distrained for replevy the same with sufficient security to be given to the sheriffe according to law that then in such case after such distresse and notice as aforesaid and expiration of the said five dayes the person distraining shall and may with the sheriffe or undersheriffe of the county or with the constable of the hundred parish or place where such distresse shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattells soe distrained to be appraized by two sworne appraizers (whome such sheriffe under sheriffe or constable are hereby impowred to sweare) to appraize the same truely according to the best of their understandings and after such appraisment shall and may lawfully sell the goods and chattells soe distrained for the best price can be gotten for the same towards satisfaction of the rent for which the said goods and chattells shall be distrained and of the charges of such distresse appraisment and sale leaveing the over-plus (if any) in the hands of the said sheriffe under sheriffe or constable for the owners use.

2. Sheaves or cocks of corn loose, &c. or hay, in any barn, &c. may be detained and if not replevied, sold. Corn, &c. not to be removed by person distraining to the damage of owner, from the place where seized.

AND whereas noe sheaves or cocks of corne loose or in the straw or hay in any barne or granary or on any hovell stack or rick can by the law be distrained or otherwise secured for rent whereby landlords are oftentimes cousened and deceived by their tenants who sell their corne graine and hay to strangers and remove the same from the premisses chargeable with such rent and thereby avoid the payment of the same Bee it further enacted by the authoritie

[1] Interlined on the roll.

aforesaid that for remedying the said practice and deceit it shall and may from and after the said first day of June be lawfull to and for any person or persons haveing rent arreare and due upon any such demise lease or contract as aforesaid to seize and secure any sheaves or cocks of corne or corne loose or in the straw or hay lying or being in any barne or granary or upon any hovell stack or rick or otherwise upon any part of the land or [ground[2]] charged with such rent and to locke up or detaine the same in the place where the same shall be found for or in the nature of a distresse untill the same shall be replevyed upon such security to be given as aforesaid and in default of replevying the same as aforesaid within the time aforesaid to sell the same after such appraisment thereof to be made soe as neverthelesse such corne graine or hay soe distrained as aforesaid be not removed by the person or persons distraineing to the damage of the owner thereof out of the place where the same shall be found and seized but be kept there (as impounded) untill the same shall be replevyed or sold in default of replevying the same within the time aforesaid.

ADMINISTRATION OF JUSTICE ACT 1705

(4 and 5 Anne, c. 3[1])

9. Attornment of tenant in what cases not necessary.

AND from and after the said first day of Trinity term all grants or conveyances thereafter to be made by fine or otherwise of any manors or rents or of the reversion or remainder of any messuages or lands shall be good and effectual to all intents and purposes without any attornment of the tenants of any such manors or of the land out of which such rent shall be issueing or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending as if their attornment had been had and made.

10. Proviso for payment of rent.

PROVIDED nevertheless that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor or by breach of any condition for non-payment of rent before notice shall be given to him of such grant by the conusee or grantee.

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[2] Pound.

[1] This is chapter 16 in the common printed editions.

LANDLORD AND TENANT ACT 1709

(8 Anne, c.18[2])

[1] Goods taken in execution not removed unless party taking pay rent due. Proviso as to the amount of rent. Power of sheriff.

FOR the more easie and effectual recovery of rents reserved on leases for life or lives term of years at will or otherwise be it enacted that from and after the first day of May which shall be in the year of our Lord one thousand seven hundred and ten no goods or chattels whatsoever lying or being in or upon any messuage lands or tenements which are or shall be leased for life or lives term of years at will or otherwise shall be liable to be taken by virtue of any execution on any pretence whatsoever unless the party at whose suit the said execution is sued out shall before the removal of such goods from off the said premisses by virtue of such execution or extent pay to the landlord of the said premisses or his bailiff all such sum or sums of money as are or shall be due for rent for the said premisses at the time of the taking such goods or chattels by virtue of such execution Provided the said arrears of rent do not amount to more than one years rent and in case the said arrears shall exceed one years rent then the said party at whose suit such execution is sued out paying the said landlord or his bailiff one years rent may proceed to execute his judgment as he might have done before the making of this Act [and the sheriff or other officer is hereby impowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money[3]]

4. Action for arrears of rent against tenant for life.

AND whereas no action of debt lies against a tenant for life or lives for any arrears of rent during the continuance of such estate for live or lives Be it enacted by the authority aforesaid that from and after the said first day of May it shall and may be lawful for any person or persons having any rent in arrear or due upon any lease or demise for life or lives to bring an action or actions of debt for such arrears of rent in the same manner as they might have done in case such rent were due and reserved upon a lease for years.

6. Distress for arrears on leases determined.

AND whereas tenants per auter vie and lessees for years or at will frequently hold over the tenements to them demised after the determination of such leases And whereas after the determination of such or any other leases no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof It is hereby further enacted by the authority aforesaid that from and after the said first day of May one thousand seven hundred and ten it shall and may be lawful for any person or persons having any rent in arrear or due upon any lease for life or lives or for years or at will ended or determined to

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[2] This is chapter 14 in the common printed editions.

[3] Annexed to the original Act in a separate schedule.

for life or lives or for years or at will ended or determined to distrain for such arrears after the determination of the said respective leases in the same manner as they might have done if such lease or leases had not been ended or determined.

7. Limitation of such distress.

[[3]PROVIDED that such distress be made within the space of six calendar months after the determination of such lease [and[4]] during the continuance of such landlords title or interest and during the possession of the tenant from whom such arrears became due]

LANDLORD AND TENANT ACT 1730
(4 Geo. 2, c.28)

AN ACT *for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents and Renewal of Leases.*

2. On half a year's rent in arrears landlord may re-enter serving a declaration of ejectment. When lessor in ejectment may recover judgment &c. Not to bar the right of any mortgagee.

And whereas great Inconveniencies do frequently happen to Leſſors and Landlords, in Caſes of Re-entry for Nonpayment of Rent, by reaſon of the many Niceties that attend the Re-entries at Common Law; and foraſmuch as when a legal Re-entry is made, the Landlord or Leſſor muſt be at the Expence, Charge, and Delay, of recovering in Ejectment, before he can obtain the actual Poſſeſſion of the demiſed Premiſſes; and it often happens that after ſuch a Re-entry made, the Leſſee or his Aſſignee, upon one or more Bills filed in a Court of Equity, not only holds out the Leſſor or landlord by an Injunction, from recovering the Poſſeſſion, but likewiſe, pending the ſaid Suit, do run much more in Arrear, without giving any Security for the Rents due, when the ſaid Re-entry was made, or which ſhall or do afterwards incur: For remedy whereof, be it enacted by the Authority aforeſaid, That in all Caſes between Landlord and Tenant, from and after the twenty-fourth Day of *June* one thouſand ſeven hundred and thirty-one, as often as it ſhall happen that one half Year's Rent ſhall be in Arrear, and the Landlord or Leſſor, to whom the ſame is due, hath Right by Law to re-enter for the Nonpayment thereof, ſuch Landlord or Leſſor ſhall and may, without any formal Demand or Re-entry, ſerve a Declaration in Ejectment for the Recovery of the demiſed Premiſſes, or in caſe the ſame cannot be legally ſerved, or no Tenant be in actual Poſſeſſion of the Premiſſes, then to affix the ſame upon the Door of any demiſed Meſſuage, or in caſe ſuch Ejectment ſhall not be for the Recovery of any Meſſuage, then upon ſome notorious Place of the Lands, Tenements or Hereditaments, comprized in ſuch Declaration in

[3] Annexed to the original Act in a separate schedule.

[4] Interlined on the roll.

Ejectment, and ſuch affixing ſhall be deemed legal Service thereof, which Service or Affixing ſuch Declaration in Ejectment, ſhall ſtand in the Place and Stead of a Demand and Re-entry; and in caſe of Judgment againſt the caſual Ejector, or Nonſuit for not confeſſing leaſe, Entry and Ouſter, it ſhall be made appear to the Court where the ſaid Suit is depending, by Affidavit, or be proved upon the Trial, in caſe the Defendant appears, that half a Year's Rent was due before the ſaid Declaration was ſerved, and that no ſufficient Diſtreſs was to be found on the demiſed Premiſſes countervailing the Arrears then due, and that the Leſſor or Leſſors in Ejectment had Power to re-enter then and in every ſuch caſe the Leſſor or Leſſors in Ejectment ſhall recover Judgment and Execution, in the ſame Manner as if the Rent in Arrear had been legally demanded, and a Re-entry made; and in caſe the Leſſee or Leſſees, his, her or their Aſſignee or Aſſignees, or other Perſon or Perſons claiming or deriving under the ſaid Leaſes, ſhall permit and ſuffer Judgment to be had and recovered on ſuch Ejectment, and Execution to be executed thereon, without paying the Rent and Arrears, together with full Coſts, and without filing any Bill or Bills for Relief in Equity, within ſix Calendar Months after ſuch Execution executed; then and in ſuch caſe the ſaid Leſſee or Leſſees, his, her or their Aſſignee or Aſſignees, and all other Perſons claiming and deriving under the ſaid Leaſe, ſhall be barred and foreclоſed from all Relief or Remedy in Law or Equity, other than by Writ of Error, for Reverſal of ſuch Judgment, in caſe the ſame ſhall be erroneous, and the ſaid Landlord or Leſſor ſhall from thenceforth hold the ſaid demiſed Premiſſes diſcharged from ſuch Leaſe; and if on ſuch Ejectment Verdict ſhall paſs for the Defendant or Defendants, or the Plaintiff or Plaintiffs ſhall be nonſuited therein, except for the Defendant or Defendants not confeſſing Leaſe, Entry and Ouſter, then in every ſuch caſe ſuch Defendant or Defendants ſhall have and recover his, her and their full Coſts: Provided always, That nothing herein contained ſhall extend to bar the Right of any Mortgagee or Mortgagees of ſuch Leaſe, or any Part thereof, who ſhall not be in Poſſeſſion, ſo as ſuch Mortgagee or Mortgagees ſhall and do, within ſix Calendar Months after ſuch Judgment obtained, and Execution executed, pay all Rent in Arrear, and all Coſts and Damages ſuſtained by ſuch Leſſor, Perſon or Perſons intitled to the Remainder or Reverſion as aforeſaid, and perform all the Covenants and Agreements, which on the Part and Behalf of the firſt Leſſee or Leſſees are and ought to be performed.

4. Tenant paying all rent with costs, proceedings to cease.

Provided always, and be it further enacted by the Authority aforeſaid, That if the Tenant or Tenants, his, her or their Aſſignee or Aſſignees, do or ſhall at any Time before the Trial in ſuch Ejectment pay or tender to the Leſſor or Landlord, his Executors or Adminiſtrators, or his, her or their Attorney in that Cauſe, or pay into the Court where the ſame Cauſe is depending, all the Rent and Arrears, together with the Coſts, then and in ſuch caſe, all further Proceedings on the ſaid Ejectment ſhall ceaſe and be diſcontinued; and if ſuch Leſſee or Leſſees, his, her or their Executors, Adminiſtrators or Aſſigns, ſhall, upon ſuch Bill filed as aforeſaid, be relieved in Equity, he, ſhe and they ſhall have, hold

and enjoy the demiſed Lands, according to the Leaſe thereof made, without any new Leaſe to be thereof made to him, her or them.

5. Method of recovering seck rents, &c.

AND whereas the remedy for recovering rents seck, rents of assize, and chief rents are tedious and difficult: Be it therefore enacted by the authority aforesaid, that from and after the twenty fourth day of June one thousand seven hundred and thirty one all and every person or persons, bodies politick and corporate, shall and may have the like remedy by distress and by impounding and selling the same, in cases of rents seck, rents of assize, and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty years before the first day of this present session of Parliament, or shall be hereafter created, as in case of rent reserved upon lease, any law or usage to the contrary notwithstanding.

6. Chief leases may be renewed without surrendering all the underleases.

AND whereas many persons hold considerable estates by leases for lives or years, and lease out the same in parcels to several under-tenants, and whereas many of those leases cannot by law be renewed without a surrender of all the under-leases derived out of the same, so that it is in the power of any such under-tenants to prevent or delay the renewing of the principal lease by refusing to surrender their under-leases, notwithstanding they have convenanted so to do, to the great prejudice of their immediate landlords, the first lessees: For preventing such inconveniences, and for making the renewal of leases more easy for the future, be it enacted by the authority aforesaid, that in case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall without a surrender of all or any the under-leases be as good and valid to all intents and purposes as if all the under-leases derived thereout had been likewise surrendred at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives or for years shall from time to time be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be intitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the messuages, lands, and tenements in the respective under-leases comprised as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have and be intitled to such and the same remedy by distress or entry in and upon the messuages, lands, tenements, and hereditaments comprised in any such under-lease for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under-lease was derived, as they would have had in case such former lease had been still continued or as they would have had in case the respective under-leases had been renewed under such new principal lease, any law, custom, or usage to the contrary hereof notwithstanding.

DISTRESS FOR RENT ACT 1737
(11 Geo. 2, c. 19)

[1] Landlords may distrain and sell goods fraudulently carried off the premisses,

From and after the twenty-fourth day of June in the year of our Lord one thousand seven hundred and thirty eight, in case any tenant or tenants, lessee or lessees for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premisses, his, her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable, it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of Great Britain called England, dominion of Wales, or the town of Berwick upon Tweed, or any person or persons by him, her, or them for that purpose lawfully impowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent, and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premisses for such arrears of rent, any law, custom, or usage to the contrary in any wise notwithstanding.

2. Unless sold to any person not privy to the fraud.

PROVIDED always, that no landlord or lessor or other person intitled to such arrears of rent shall take or seize any such goods or chattels as a distress for the same which shall be sold bona fide and for a valuable consideration before such seizure made to any person or persons not privy to such fraud as aforesaid, any thing herein contained to the contrary notwithstanding.

7. Landlords may break open houses to seize goods fraudulently secured therein.

AND where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place, locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons impowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his, her, or their assistance the constable, head-borough, borsholder, or other peace-officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein: and in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), in the day-time, to break open and enter into such house, barn, stable, out-house, yard, close, and place, and to take and

seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former Act if such goods and chattels had been put in any open field or place.

8. May distrain stock or cattle on the premisses, for arrears of rent.

AND from and after the said twenty fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty eight, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver, or other person or persons impowered by him, her, or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants feeding or depasturing upon any common, appendent or appurtenant, or any ways belonging to all or any part of the premisses demised or holden; and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever which shall be growing on any part of the estates so demised or holden, as a distress for arrears of rent; and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place on the premisses so demised or holden; and in case there shall be no barn or proper place on the premisses so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premisses, and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of; and the appraisement thereof to be taken when cut, gathered, cured, and made, and not before.

11. Attornments of estates by tenants, void. Exceptions.

AND whereas the possession of estates in lands, tenements, and hereditaments is rendered very precarious by the frequent and fraudulent practice of tenants in attorning to strangers who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates and put to the difficulty and expense of recovering the possession thereof by actions or suits at law: For remedy thereof from and after the said twenty fourth day of June in the year of our Lord one thousand seven hundred and thirty eight all and every such attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments within that part of Great Britain called England, dominion of Wales, or town of Berwick upon Tweed, shall be absolutely null and void to all intents and purposes whatsoever, and the possession of their respective landlord or landlords, lessor or lessors; shall not be deemed or construed to be any wise changed, altered, or affected by any such attornment or attornments: Provided always, that nothing herein contained shall extend to vacate or effect any attornment made pursuant to, and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, or lessor or lessors, or to any mortgagee after the mortgage is become forfeited.

14. Rents how to be recovered, where the demises are not by deed.

AND to obviate some difficulties that many times occur in the recovery of rents where the demises are not by deed . . . from and after the said twenty-fourth day of June it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants in an action on the case for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be non-suited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

16. Provisions for landlords where the tenants desert the premisses.

AND whereas landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premisses to lie uncultivated without any distress thereon, whereby their landlords or lessors might be satisfied for the rent-arrear, but also refusing to deliver up the possession of the demised premisses, whereby the landlords are put to the expence and delay of recovering in ejectment: Be it further enacted by the authority aforesaid, that from and after the said twenty fourth day of June one thousand seven hundred and thirty eight, if any tenant holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premisses, who shall be in arrear for one year's rent, shall desert the demised premisses and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent it shall and may be lawful to and for two or more justices of the peace of the county, riding, division, or place (having no interest in the demised premisses), at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed on the most notorious part of the premisses, notice in writing what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premisses, then the said justices may put the landlord or landlords, lessor or lessors into the possession of the said demised premisses, and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

17. Tenants may appeal from the justices.

PROVIDED always, that such proceedings of the said justices shall be examinable into in a summary way by the next justice or justices of assize of the respective counties in which such lands or premisses lie; and if they lie in the city of London or county of Middlesex, by the judges of the courts of King's Bench or Common Pleas; and if in the counties palatine of Chester, Lancaster, or Durham, then before the judges thereof; and if in Wales, then before the courts of grand-sessions respectively, who are hereby respectively impowered to order restitution to be made to such tenant, together with his or her expences and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same; and in case they shall affirm the act of the said

justices, to award costs not exceeding five pounds for the frivolous appeal.

PRESCRIPTION ACT 1832
(2 and 3 Will. 4, c. 71)

[1] Claims to right of common and other profits a prendre, (except tithes, &c.) not to be defeated after thirty years enjoyment by merely showing the commencement of the right. After sixty years enjoyment the right to be absolute, unless shown to be had by consent or agreement.

No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our sovereign lord the King, or any land being parcel of the duchy of Lancaster or the duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

2. In claims of rights of way or other easements the periods to be twenty years and forty years.

No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said lord the King, or being parcel of the duchy of Lancaster or of the duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or, other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

4. The before mentioned periods to be deemed those next before a suit or action in which the claim is brought in question. What shall constitute an interruption.

Each of the respective periods of years herein-before mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question; and no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made.

5. In actions on the case, &c. the claimant may allege his right generally, as at present. In pleas to trespass and other pleadings, where party used to allege his claim from time immemorial, enjoyment during the period mentioned in this Act may be alleged; and exceptions or other matters must be replied specially.

In all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this Act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter herein-before mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

6. No presumption to be allowed in support of a claim on proof of enjoyment for less than the requisite number of years.

In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim.

7. Proviso where any person capable of resisting a claim is an infant, &c.

Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, non compos

mentis, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods herein-before mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

9. Time to be excluded in certain cases in computing the term of forty years appointed by this Act.

Provided always, that when any land or water upon, over or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

LANDLORD AND TENANT ACT 1851
(14 and 15 Vic., c. 25)

AN ACT *to improve the Law of Landlord and Tenant in relation to Emblements, to growing Crops seized in Execution, and to Agricultural Tenants Fixtures* *[24th July 1851.]*

[1] On determination of leases or tenancies under tenant for life, &c., instead of emblements tenant to hold until expiration of current year, &c. under tenant for life, &c., instead of emblements tenant to hold until expiration of current year, &c.

Where the lease or tenancy of any farm or lands held by a tenant at rackrent shall determine by the death or cessen of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to hold and occupy such farm or lands until the expiration of the then current year of his tenancy, and shall then quit, upon the terms of his lease or holding, in the same manner as if such lease or tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate; and the succeeding landlord or owner shall be entitled to recover and receive of the tenant, in the same manner as his predecessor or such tenant's lessor could have done if he had been living or had continued the landlord or lessor, a fair proportion of the rent for the period which may have elapsed from the day of the death or cesser of the estate of such predecessor or lessor to the time of the tenant so quitting; and the succeeding landlord or owner and the tenant respectively shall, as between themselves and as against each other, be entitled to all the benefits and advantages, and be subject to the terms, conditions, and restrictions, to which the preceding landlord or lessor and such tenant respectively would

have been entitled and subject, in case the lease or tenancy had determined in manner aforesaid at the expiration of such current year: Provided always, that no notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.

2. Growing crops seized and sold under execution to be liable for accruing rent.

In case all or any part of the growing crops of the tenant of any farm or lands shall be seized and sold by any sheriff or other officer by virtue of any writ of fieri facias or other writ of execution, such crops, so long as the same shall remain on the farms or lands, shall, in default of sufficient distress of the goods and chattels of the tenant, be liable to the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such growing crops by any such sheriff or other officer.

3. Tenant may remove buildings and fixtures erected by him on farms, unless landlord elects to purchase them.

If any tenant of a farm or lands shall, after the passing of this Act, with the consent in writing of the landlord for the time being, at his own cost and expence, erect any farm-building, either detached or otherwise, or put up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture, (which shall not have been erected or put up in pursuance of some obligation in that behalf,) then all such buildings, engines, and machinery shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same or any part thereof may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition, as the same were in before the erection of anything so removed: Provided nevertheless, that no tenant shall, under the provision last aforesaid, be entitled to remove any such matter or thing as aforesaid without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do; and thereupon it shall be lawful for the landlord, or his agent on his authority, to elect to purchase the matters and things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord; and the value thereof shall be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the landlord who shall have so elected to purchase the same.

4. If a tenant quits leaving any tithe rent-charge unpaid, the landlord, &c. may pay the same, and recover from the outgoing tenant as if it were a simple contract debt.

If any occupying tenant of land shall quit, leaving unpaid any tithe rentcharge for or charged upon such land, which he was by the terms of his tenancy or holding legally or equitably liable to pay, and the tithe owner shall give or have given notice of proceeding by distress upon the land for recovery thereof, it shall be lawful for the landlord, or the succeeding tenant or occupier, to pay such

tithe rentcharge, and any expences incident thereto, and to recover the amount or sum of money which he may so pay over against such first-named tenant or occupier, or his legal representatives, in the same manner as if the same were a debt by simple contract due from such first-named tenant or occupier to the landlord or tenant making such payment.

THE NEW ZEALAND BOUNDARIES ACT 1863 (U.K.)

26 and 27 Vict., Ch. 23

An Act to alter the boundaries of New Zealand

[8 June 1863

WHEREAS by the eightieth section of an Act of the fifteenth year of Her Majesty, chapter 72 intituled "An Act to grant a representative constitution to the Colony of New Zealand", it was provided that for the purposes of that Act the said colony should be held to include the territories therein mentioned: And whereas it is expedient to alter the limits of the said colony as declared by the said Act.

2. Boundaries of New Zealand—The Colony of New Zealand shall for the purposes of the said Act and for all other purposes whatever be deemed to comprise all territories, islands, and countries lying between the 162nd degree of east longitude and the 173rd degree of west longitude, and between the 33rd and 53rd parallels of south latitude.

LETTERS PATENT, DATED JANUARY 18, 1887, PASSED UNDER THE GREAT SEAL OF THE UNITED KINGDOM, FOR THE ANNEXATION OF CERTAIN ISLANDS, KNOWN AS THE KERMADEC GROUP, TO THE COLONY OF NEW ZEALAND.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India: To all to whom these presents shall come, greeting.

Recites resolution of the New Zealand Legislature in favour of the annexation of Kermadec Islands to New Zealand.

Whereas it is expedient that certain islands belonging to Us, situated in the South Pacific Ocean, between the parallels of 29 degrees and 32 degrees south latitude and the meridians of 177 degrees and 180 degrees west longitude, and commonly known as the Kermadec Group, should be annexed to and form part of Our Colony of New Zealand:

And whereas the legislative council and house of representatives of Our said colony have expressed their desire for such annexation, and have passed the following resolution:—

"We, Your Majesty's loyal subjects, the members of the legislative council (or house of representatives) of the Colony of New Zealand, in Parliament assembled, beg to express our great satisfaction on learning that Your Majesty has been pleased to order that the British flag shall be hoisted on the Kermadec group of islands; and we now respectfully pray that Your Majesty will be further pleased to order that those islands be annexed to this colony."

Governor authorities to issue proclamation for the annexation of the Kermadec Islands.

Now We do, by these Our letters patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, authorise Our governor for the time being of Our said Colony of New Zealand, by proclamation[1] under his hand and the public seal of the said colony, to declare that from and after a day to be therein mentioned, the said islands shall be annexed to and form part of Our said colony.

Proclamation not to issue unless law be passed extending laws of the colony to the islands annexed. Proviso: application of such laws may be modified by proclamation, &c.

II. And We do hereby direct Our said governor not to issue any such proclamation as aforesaid unless the Legislature of Our said Colony of New Zealand shall have passed a law providing that the said islands shall, on the day aforesaid, become part of Our said colony, and subject to the laws in force therein: Provided always that the application of the said laws to the said islands may be modified either by such proclamation as aforesaid, or by any law or laws to be from time to time passed by the Legislature of Our said colony for the government of the said islands so annexed.

Power reserved to Her Majesty to revoke, alter, or amend the present letters patent.

III. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our letters patent as to Us or them shall seem meet.

Publication of letters patent.

IV. And We do further direct and enjoin that these Our letters patent shall be read and proclaimed at such place or places as Our said governor shall think fit within Our said Colony of New Zealand.

In witness whereof We have caused these Our letters to be made patent. Witness Ourself at Westminster the 18th day of January, in the fiftieth year of Our reign.

By warrant under the Queen's sign manual.

Muir Mackenzie.

ORDER IN COUNCIL ALTERING THE BOUNDARIES OF THE COLONY OF NEW ZEALAND.

1901 No. 531

At the Court at St. James's, the 13th day of May, 1901.

PRESENT,

The King's Most Excellent Majesty in Council.

58 & 59 Vict. c. 34.

Whereas by the Colonial Boundaries Act, 1895, it is provided that where the boundaries of a Colony have either before or after the passing of that Act, been altered by Order in Council or Letters

[1] These letters patent were published in the New Zealand Government Gazette, April 5, 1887. By Proclamation of the Governor dated July 21, 1887, the Kermadec Group was annexed to New Zealand as from August 1, 1887.

Patent the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the Colony. Provided that the consent of a self-governing Colony shall be required for the alteration of the boundaries thereof.

And whereas it is expedient that the boundaries of the self-governing Colony of New Zealand should be altered in such manner that the Islands of the Cook Group and such other islands in the Pacific, within the limits hereinafter described, as may now or hereafter form part of His Majesty's Dominions, shall become part of the said Colony of New Zealand.

And whereas the said Colony of New Zealand has, by resolutions of both Houses of its Legislature, consented to the alteration of the boundaries of the Colony as hereinafter described.

Now therefore, His Majesty, by virtue and in exercise of the powers by the Colonial Boundaries Act, 1895, or otherwise in His Majesty vested, is pleased by and with the advice of His Privy Council to order and it is hereby ordered as follows:—

From and after a date to be appointed by the Governor of the Colony of New Zealand by Proclamation[1] under his hand and the Public Seal of the colony the boundaries of the Colony of New Zealand as defined in an Act of the Twenty-sixth year of the Reign of Her late Majesty Queen Victoria entitled "An Act to alter the Boundaries of New Zealand" shall be extended so as to include all the islands and territories, which now or may hereafter form part of His Majesty's Dominions situate within the following boundary line, viz.:—

A line commencing at a point at the intersection of the 23rd degree of South Latitude, and the 156th degree of Longitude West of Greenwich and proceeding due North to the point of intersection of the 8th degree of South Latitude and the 156th degree of Longitude West of Grenwich, thence due West to the point of intersection of the 8th degree of South Latitude and the 167th degree of Longitude West of Greenwich, thence due South to the point of intersection of the 17th degree of South Latitude and the 167th degree of Longitude West of Greenwich, thence due West to the point of intersection of the 17th degree of South Latitude and the 170th degree of Longitude West of Greenwich, thence due South to the point of intersection of the 23rd degree of South Latitude and the 170th degree of Longitude West of Greenwich, and thence due East to the starting point at the intersection of the 23rd degree of South Latitude and the 156th degree of Longitude West of Greenwich.

A. W. FitzRoy.

[1] By Proclamation of the Governor, dated June 10, 1901, this Order was brought into force as from June 11, 1901.

ORDER IN COUNCIL

PROVIDING FOR THE GOVERNMENT OF THE ROSS DEPENDENCY.

1923 No. 974

At the Court at Buckingham Palace, the 30th day of July, 1923.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by the British Settlements Act, 1887, it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to establish all such laws and institutions and constitute such courts and officers as may appear to His Majesty in Council to be necessary for the peace, order and good government of His Majesty's subjects and others within any British settlement:

And whereas the coasts of the Ross Sea, with the islands and territories adjacent thereto, between the 160th degree of East Longitude and the 150th degree of West Longitude, which are situated south of the 60th degree of South Latitude, are a British settlement within the meaning of the said Act:

And whereas it is expedient that provision should be made for the government thereof:

Now, therefore, His Majesty, by virtue and in exercise of the powers by the said Act, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

I. From and after the publication of this Order in the Government Gazette of the Dominion of New Zealand[1] that part of His Majesty's Dominions in the Antarctic Seas, which comprises all the islands and territories between the 160th degree of East Longitude and the 150th degree of West Longitude which are situated south of the 60th degree of South Latitude shall be named the Ross Dependency.

II. From and after such publication as aforesaid the Governor-General and Commander-in-Chief of the Dominion of New Zealand for the time being (hereinafter called the Governor) shall be the Governor of the Ross Dependency; and all the powers and authorities which by this Order are given and granted to the Governor for the time being of the Ross Dependency are hereby vested in him.

III. In the event of the death or incapacity of the said Governor-General and Commander-in-Chief of the Dominion of New Zealand or in the event of his absence from the said Dominion, the Officer for the time being administering the government of the Dominion shall be Governor for the time being of the Ross Dependency.

IV. The said Governor is further authorised and empowered to make all such Rules and Regulations as may lawfully be made by

[1] This Order in Council was published in the New Zealand Gazette, August 16, 1923.

His Majesty's authority for the peace, order and good government of the said Dependency, subject, nevertheless, to any instructions which he may from time to time receive from His Majesty or through a Secretary of State.

V. The Governor is authorised to make and execute, on His Majesty's behalf, grants and dispositions of any Lands which may lawfully be granted or disposed of by His Majesty within the said Dependency, in conformity with such Rules and Regulations as may from time to time be in force in the Dependency.

M.P.A. Hankey.

THE JUDICIAL COMMITTEE ACT 1833
(3 & 4 Will. 4 c. 41)

[1.] Certain members of privy council to form a committee to be styled "The Judicial Committee of the Privy Council"

The president for the time being of his Majesty's privy council, and such of the members of his Majesty's privy council as shall from time to time hold any of the offices following, that is to say, the office of lord keeper or first lord commissioner of the great seal of Great Britain and also all persons, members of his Majesty's privy council, who shall have been president thereof or shall have held any of the other offices herein-before mentioned, shall form a committee of his Majesty's said privy council, and shall be styled "The Judicial Committee of the Privy Council": Provided nevertheless, that it shall be lawful for his Majesty from time to time, as and when he shall think fit, by his sign manual, to appoint any two other persons, being privy councillors, to be members of the said committee.

3. Appeals to King in council from sentence of any judge, etc., shall be referred to the committee, to report thereon

All appeals or complaints in the nature of appeals whatever, which either by virtue of this Act, or of any law, statute, or custom, may be brought before his Majesty or his Majesty in council from or in respect of the determination, sentence, rule, or order of any court, judge, or judicial officer, and all such appeals as are now pending and unheard, shall from and after the passing of this Act be referred by his Majesty to the said judicial committee of his privy council, and such appeals, causes, and matters shall be heard by the said judicial committee, and a report or recommendation thereon shall be made to his Majesty in council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by his Majesty to the whole of his privy council or a committee thereof (the nature of such report or recommendation being always stated in open court).

5. No report to be made unless with concurrence of majority present. Other members of council may be summoned to attend

No report or recommendation shall be made to his Majesty unless a majority of the members of such judicial committee present at the hearing shall concur in such report or recommendation: Provided always, that nothing herein contained shall prevent his Majesty, if he shall think fit, from summoning any other of the members of his said privy council to attend the meetings of the said committee.

6. If his Majesty directs the attendance of any member who is a judge, the other judges of the court to which he belongs shall arrange with regard to the business of the court

In case his Majesty shall be pleased, by directions under his sign manual, to require the attendance at the said committee for the purposes of this Act of any member or members of the said privy council who shall be a judge or judges of the Court of King's Bench, or of the Court of Common Pleas, or of the Court of Exchequer, such arrangements for dispensing with the attendance of such judge or judges upon his or their ordinary duties during the time of such attendance at the privy council as aforesaid shall be made by the judges of the court or courts to which such judge or judges shall belong respectively in regard to the business of the court, and by the judges of the said three courts, or by any eight or more of such judges, including the chiefs of the several courts, in regard to all other duties, as may be necessary and consistent with the public service.

7. Committee may take evidence viva voce, or upon written depositions

It shall be lawful for the said judicial committee, in any matter which shall be referred to such committee, to examine witnesses by word of mouth (and either before or after examination by deposition), or to direct that the depositions of any witness shall be taken in writing by the registrar of the said privy council to be appointed by his Majesty as herein-after mentioned, or by such other person or persons, and in such manner, order, and course, as his Majesty in council or the said judicial committee shall appoint and direct; and the said registrar and such other person or persons so to be appointed shall have the same powers as are now possessed by an examiner of the High Court of Chancery or of any court ecclesiastical.

8. Committee may order any particular witnesses to be examined, and as to any particular facts, and may remit causes for rehearing

In any matter which shall come before the said judicial committee it shall be lawful for the said committee to direct that such witnesses shall be examined or re-examined, and as to such facts as to the said committee shall seem fit, notwithstanding any such witness may not have been examined, or no evidence may have been given on any such facts in a previous stage of the matter; and it shall also be lawful for his Majesty in council, on the recommendation of the said committee, upon any appeal, to remit the matter which shall be the subject of such appeal to the court from the decision of which such appeal shall have been made, and at the same time to direct that such court shall rehear such matter, in such form, and either generally or upon certain points only, and upon such rehearing take such additional evidence, though before rejected, or reject such evidence before admitted, as his Majesty in council shall direct; and further, on any such remitting or otherwise, it shall be lawful for his Majesty in council to direct that one or more feigned issue or issues shall be tried in any court in any of his Majesty's dominions abroad, for any purpose for which such issue or issues shall to his Majesty in council seem proper.

9. Witnesses to be examined on oath, and to be liable to punishment for perjury

Every witness who shall be examined in pursuance of this Act shall give his or her evidence upon oath, or if a Quaker or Moravian upon solemn affirmation, which oath and affirmation respectively shall be administered by the said judicial committee and registrar, and by such other person or persons as his Majesty in council or the said judicial committee shall appoint; and every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and shall be punished accordingly.

11. Committee may, in certain cases, direct depositions to be read, etc., at the trial of the issue

It shall be in the discretion of the said judicial committee to direct that, on the trial of any such issue, the depositions already taken of any witness who shall have died, or who shall be incapable to give oral testimony, shall be received in evidence; and further, that such deeds, evidences, and writings shall be produced, and that such facts shall be admitted, as to the said committee shall seem fit.

12. Committee may make orders as to the admission of witnesses

It shall be lawful for the said judicial committee to make such and the like orders respecting the admission of persons, whether parties or others, to be examined as witnesses upon the trial of any such issues as aforesaid, as the lord high chancellor or the Court of Chancery has been used to make respecting the admission of witnesses upon the trial of issues directed by the lord chancellor or the Court of Chancery.

13. Committee may direct new trials of issues

It shall be lawful for the said judicial committee to direct one or more new trial or new trials of any issue, either generally or upon certain points only; and in case any witness examined at a former trial of the same issue shall have died, or have, through bodily or mental disease or infirmity, become incapable to repeat his testimony, it shall be lawful for the said committee to direct that parol evidence of the testimony of such witness shall be received.

15. Costs to be in the discretion of the committee

The costs incurred in the prosecution of any appeal or matter referred to the said judicial committee, and of such issues as the same committee shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the aforesaid registrar, or such other person or persons, to be appointed by his Majesty in council or the said judicial committee, and in such manner as the said committee shall direct.

16. Decrees to be enrolled

The orders or decrees of his Majesty in council made, in pursuance of any recommendation of the said judicial committee, in any matter of appeal from the judgment or order of any court or judge, shall be enrolled for safe custody in such manner, and the same may be inspected and copies thereof taken under such regulations, as his Majesty in council shall direct.

17. Committee may refer matters to registrar in the same manner as matters are by the Court of Chancery referred to a master

It shall be lawful for the said committee to refer any matters to be examined and reported on to the aforesaid registrar, or to such other person or persons as shall be appointed by his Majesty in council or by the said judicial committee, in the same manner and for the like purposes as matters are referred by the Court of Chancery to a master of the said court; and for the purposes of this Act the said registrar and the said person or persons so to be appointed shall have the same powers and authorities as are now possessed by a master in Chancery.

18. His Majesty may appoint registrar

It shall be lawful for his Majesty, under his sign manual, to appoint any person to be the registrar of the said privy council, as regards the purposes of this Act, and to direct what duties shall be performed by the said registrar.

19. Attendance of witnesses, and production of papers, etc., may be compelled by subpœna

It shall be lawful for the president for the time being of the said privy council to require the attendance of any witnesses, and the production of any deeds, evidences, or writings, by writ to be issued by such president in such and the same form, or as nearly as may be, as that in which a writ of subpœna ad testificandum or of subpœna duces tecum is now issued by his Majesty's Court of King's Bench at Westminster; and every person disobeying any such writ so to be issued by the said president shall be considered as in contempt of the said judicial committee, and shall also be liable to such and the same penalties and consequences as if such writ had issued out of the said Court of King's Bench, and may be sued for such penalties in the said court.

20. Time of appealing

All appeals to his Majesty in council shall be made within such times respectively within which the same may now be made, where such time shall be fixed by any law or usage, and where no such law or usage shall exist, then within such time as shall be ordered by his Majesty in council; and subject to any right subsisting under any charter or constitution of any colony or plantation, it shall be lawful for his Majesty in council to alter any usage as to the time of making appeals, and to make any order respecting the time of appealing to his Majesty in council.

21. Decrees on appeals from courts abroad to be carried into effect as the King in council shall direct

The order or decree of his Majesty in council on any appeal from the order, sentence, or decree of any court of justice in the East Indies, or of any colony, plantation, or other his Majesty's dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as his Majesty in council shall, on the recommendation of the said judicial committee, direct; and it shall be lawful for his Majesty in council, on such recommendation, by order to direct that such court of justice shall carry the same into effect accordingly, and thereupon such court of

justice shall have the same powers of carrying into effect and enforcing such order or decree as are possessed by or are hereby given to his Majesty in council: Provided always, that nothing in this Act contained shall impeach or abridge the powers, jurisdiction, or authority of his Majesty's privy council, as heretofore exercised by such council, or in anywise alter the constitution or duties of the said privy council, except so far as the same are expressly altered by this Act, and for the purposes aforesaid.

23. Orders made on such appeals to have effect notwithstanding death of parties, etc.

In any case where any order shall have been made on any such appeal as last aforesaid, the same shall have full force and effect notwithstanding the death of any of the parties interested therein; but in all cases where any such appeal may have been withdrawn or discontinued, or any compromise made in respect of the matter in dispute, before the hearing thereof, then the determination of his Majesty in council in respect of such appeal shall have no effect.

24. His Majesty may make orders for regulating the mode, etc., of appeals

It shall be lawful for his Majesty in council from time to time to make any such rules and orders as may be thought fit for the regulating the mode, form, and time of appeal to be made from the decisions of the said courts of Sudder Dewanny Adawlut, or any other courts of judicature in India or elsewhere to the eastward of the Cape of Good Hope (from the decisions of which an appeal lies to his Majesty in council), and in like manner from time to time to make such other regulations for the preventing delays in the making or hearing such appeals, and as to the expenses attending the said appeals, and as to the amount or value of the property in respect of which any such appeal may be made.

28. Power of enforcing decrees

The said judicial committee shall have and enjoy in all respects such and the same power of punishing contempts and of compelling appearances, and his Majesty in council shall have and enjoy in all respects such and the same powers of enforcing judgments, decrees, and orders, as are now exercised by the High Court of Chancery or the Court of King's Bench (and both in personam and in rem), . . .

THE JUDICIAL COMMITTEE ACT 1844
(7 & 8 Vict. c. 69)

[1.] Her Majesty, by order in council, may provide for the admission of appeals from any court in any colony, although such court shall not be a court of appeal

It shall be competent to her Majesty, by any order or orders to be from time to time for that purpose made with the advice of her privy council, to provide for the admission of any appeal or appeals to her Majesty in council from any judgments, sentences,

decrees, or orders of any court of justice within any British colony or possession abroad, although such court shall not be a court of errors or a court of appeal within such colony or possession; and it shall also be competent to her Majesty, by any such order or orders as aforesaid, to make all such provisions as to her Majesty in council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as her Majesty in council shall pronounce thereon: Provided always, that it shall be competent to her Majesty in council to revoke, alter, and amend any such order or orders as aforesaid, as to her Majesty in council shall seem meet: Provided also, that any such order as aforesaid may be either general and extending to all appeals to be brought from any such court of justice as aforesaid, or special and extending only to any appeal to be brought in any particular case: Provided also, that every such general order in council as aforesaid shall be published in the London Gazette within one calendar month next after the making thereof: Provided also, that nothing herein contained shall be construed to extend to take away or diminish any power now by law vested in her Majesty for regulating appeals to her Majesty in council from the judgments, sentences, decrees, or orders of any courts of justice within any of her Majesty's colonies or possessions abroad.

8. Judicial committee may appoint clerk of privy council to take proofs in matters referred to them

Provided always, that in the case of any matter or thing being referred to the judicial committee it shall be lawful for the said committee to appoint one or other of the clerks of the privy council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such clerk's report to them as if such formal proofs had been taken by and before the said judicial committee.

11. Judicial committee may make rules, to be binding upon such courts, requiring judges notes of evidence, reasons for judgments, etc.

It shall and may be lawful for the said judicial committee to make any general rule or regulation, to be binding upon all courts in the colonies and other foreign settlements of the crown requiring the judges notes of the evidence taken before such court on any cause appealed, and of the reasons given by the judges of such court, or by any of them, for or against the judgment pronounced by such court; which notes of evidence and reasons shall by such court be transmitted to the clerk of the privy council within one calendar month next after the leave given by such court to prosecute any appeal to her Majesty in council; and such order of the said committee shall be binding upon all judges of such courts in the colonies or foreign settlements of the crown.

THE COURT OF CHANCERY ACT 1851

(14 & 15 Vict. c. 83)

16. Quorum of Judicial Committee

No matter shall be heard, nor shall any order, report, or recommendation be made, by the Judicial Committee, in pursuance of any Act, unless in the presence of at least three members of the said committee, exclusive of the Lord President of Her Majesty's Privy Council for the time being.

THE PRIVY COUNCIL REGISTRAR ACT 1853

(16 & 17 Vict. c. 85)

An Act for removing Doubts as to the Powers of the Registrar of Her Majesty's Privy Council to administer Oaths, and for providing for the Performance of the Duties of such Registrar in his absence [20th August 1853]

1. Registrar, etc., may examine witnesses upon oath, etc.

It shall be lawful for the registrar for the time being of her Majesty's Privy Council appointed under the said Act, or such other person or persons as shall be appointed for this purpose by her Majesty in Council or by the said Judicial Committee, to examine witnesses and take affidavits and depositions upon oath in all appeals, causes, and matters whatsoever pending before her Majesty in Council or before the said Judicial Committee, and to administer oaths accordingly.

2. President of the Council may appoint person to act for registrar in his absence

In case of the absence of the said registrar it shall be lawful for the President of her Majesty's Privy Council to appoint a person to act for the said registrar during such absence; and such person while so acting shall have the same powers in all respects as are vested in the said registrar.

3. Saving of existing powers

Nothing herein contained shall be taken to affect the power of her Majesty under the said Act or otherwise, to direct or limit the duties to be performed by the said registrar, or any other authority which might have been exercised by her Majesty or by her Privy Council or the said Judicial Committee in case this Act had not been passed.

THE APPELLATE JURISDICTION ACT 1876

(39 & 40 Vict. c. 59)

6. Appointment of Lords of Appeal in Ordinary by Her Majesty

A Lord of Appeal in Ordinary shall, if a Privy Councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a Lord of Appeal in Ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a Privy Councillor, to sit and act as a member of the Judicial Committee of the Privy Council.

THE JUDICIAL COMMITTEE ACT 1881

(44 & 45 Vict. c. 3)

An Act to further improve the Administration of Justice in the Judicial Committee of the Privy Council

[17th February 1881]

1. Lords Justices of Appeal to be members of Judicial Committee

Every person holding or who has held in England the office of a Lord Justice of Appeal shall, if a member of Her Majesty's Privy Council in England, be a member of the Judicial Committee of the Privy Council.

THE APPELLATE JURISDICTION ACT 1887

(50 & 51 Vict. c. 70)

An Act to amend the Appellate Jurisdiction Act, 1876

[16th September 1887]

3. Amendment of 3 & 4 Will. 4 c. 41

The Judicial Committee of the Privy Council as formed under the provisions of the first section of the Judicial Committee Act, 1833, shall include such members of Her Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Act, 1876, and this Act, described as high judicial offices.

5. Amendment of 39 & 40 Vict. c. 59, s. 25

The expression "high judicial office" as defined in the twenty-fifth section of the Appellate Jurisdiction Act, 1876, shall be deemed to include the office of a Lord of Appeal in Ordinary and the office of a member of the Judicial Committee of the Privy Council.

THE JUDICIAL COMMITTEE AMENDMENT ACT 1895
(58 & 59 Vict. c. 44)

An Act to amend the Law relating to the Judicial Committee of Her Majesty's Privy Council
[6th July 1895]

1. Provision as to persons being or having been Colonial Chief Justices or Judges

(1) If any person being or having been Chief Justice or a Judge of the Supreme Court of the Dominion of Canada, or of a Superior Court in any province of Canada, of any of the Australasian colonies mentioned in the schedule to this Act, or of either of the South African colonies mentioned in the said schedule, or of any other Superior Court in Her Majesty's Dominions named in that behalf by Her Majesty in Council, is a member of Her Majesty's Privy Council, he shall be a member of the Judicial Committee of the Privy Council.

(3) The provisions of this Act shall be in addition to, and shall not affect, any other enactment for the appointment of or relating to members of the Judicial Committee.

SCHEDULE
Australasian Colonies

New South Wales.

New Zealand.

Queensland.

South Australia.

Tasmania.

Victoria.

Western Australia.

[Remainder of schedule repealed or spent]

THE APPELLATE JURISDICTION ACT 1908
(8 Edw. 7 c. 51)

An Act to amend the Law with respect to the Judicial Committee of the Privy Council . . .
[21st December 1908]

1. Power to direct colonial judge to act as assessor of the Judicial Committee on hearing of appeals from the colony

(1) For the purpose of the hearing of any appeal to His Majesty in Council from any court in a British possession, His Majesty may, if he thinks fit, authorise any person who is or has been a

judge of the court from which the appeal is made, or a judge of a court to which an appeal lies from the court from which the appeal is made, and whose services are for the time being available, to attend as an assessor of the Judicial Committee of the Privy Council on the hearing of the appeal.

(2) This section shall not apply to any British possession except the possessions specified in the schedule to this Act and any possession which may hereafter be added to that schedule by Order in Council.

3. Extension of 58 & 59 Vict. c. 44

(1) Section one of the Judicial Committee Amendment Act, 1895, shall have effect as if the persons named therein included any person being or having been chief justice or a justice of the High Court of Australia or chief justice or judge of the Supreme Court of Newfoundland.

4. Resignation of members of the Judicial Committee

Any member of the Judicial Committee of the Privy Council may resign his office as member of that Committee by giving notice of his resignation in writing to the Lord President of the Council.

5. Power to make continuing Order instead of annual Order directing appeals to be referred to Judicial Committee

His Majesty may from time to time by Order in Council make a general Order directing that all appeals shall be referred to the Judicial Committee of the Privy Council until the Order is rescinded, and section nine of the Judicial Committee Act, 1844, shall have effect as if any such general Order for the time being in force were substituted in the first proviso to that section for the annual Order therein referred to, and the time for which the Order remains in force were substituted for the twelve months next after the making of the general Order. The expression "appeals" in this section means appeals on petitions presented to His Majesty in Council, and includes any complaints in the nature of appeals and any petitions in the matter of appeals.

7. Short title and construction

(1) This Act may be cited as the Appellate Jurisdiction Act, 1908.

(2) The provisions of this Act shall be in addition to and shall not affect any other enactment for the appointment of or relating to members of the Judicial Committee.

SCHEDULE

The Dominion of New Zealand

[The remainder of the schedule is irrelevant for New Zealand.]

THE JUDICIAL COMMITTEE ACT 1915
(5 & 6 Geo. 5 c. 92)

An Act to enable the Judicial Committee of the Privy Council to sit in more than one Division at the same time [23rd December 1915]

1. Power of Judicial Committee of the Privy Council to sit in more than one division at the same time

(1) The Judicial Committee of the Privy Council may, subject to the approval of the Lord Chancellor and the Lord President of the Council, sit in more than one division at the same time, and in such case anything which may be done to, by or before the Judicial Committee may be done to, by or before any such division of the Judicial Committee.

(2) The power of His Majesty in Council to make rules as to the practice and procedure before the Judicial Committee shall include the power to make orders for the constituting of divisions and the holding of divisional sittings of the Judicial Committee.

V. (B) ORDERS IN COUNCIL MADE UNDER SECTION 24 OF THE JUDICIAL COMMITTEE ACT 1833, SECTION 1 OF THE JUDICIAL COMMITTEE ACT 1844, SECTION 5 OF THE APPELLATE JURISDICTION ACT 1908, AND OTHER RELEVANT POWERS

ORDER IN COUNCIL MAKING CONTINUING ORDER DIRECTING THAT ALL APPEALS TO HIS MAJESTY IN COUNCIL SHALL BE REFERRED TO THE JUDICIAL COMMITTEE.

1909 No. 1228

At the Court at Buckingham Palace, the 18th day of October, 1909.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by Section 9 of the Judicial Committee Act, 1844 it is enacted "that in case any Petition of Appeal whatever shall be "presented addressed to Her Majesty in Council and such Petition "shall be duly lodged with the Clerk of the Privy Council it shall be "lawful for the Judicial Committee to proceed in hearing and "reporting upon such Appeal without any Special Order in Council "referring the same to them provided that Her Majesty in Council "shall have by an Order in Council in the month of November "directed that all Appeals shall be referred to the said Judicial "Committee on which Petitions may be presented to Her Majesty "in Council during the twelve months next after the making of "such Order and that the said Judicial Committee shall proceed to "hear and report upon all such Appeals in like manner as if each "such Appeal had been referred to the said Judicial Commit- "tee by a Special Order of Her Majesty in Council. Provided "always that it shall be lawful for Her Majesty in Council at any "time to rescind any General Order so made and in case of such "Order being so rescinded all Petitions of Appeal shall in the first "instance be preferred to Her Majesty in Council and shall not be "proceeded with by the said Judicial Committee without a Special "Order of reference": 7 & 8 Vict. c. 69.

And whereas by the Interpretation Act, 1889 it is enacted that "in this Act and in every other Act whether passed before or after "the commencement of this Act references to the Sovereign "reigning at the time of the passing of the Act or to the Crown shall "unless the contrary intention appears be construed as references "to the Sovereign for the time being": 52 & 53 Vict. c. 63.

And whereas His Majesty was pleased by His Order in Council dated the 21st day of November 1908 and made under and by virtue of the provisions of the said Section 9 of the Judicial Committee Act, 1844 to order that all Appeals or Complaints in the nature of Appeals on which Petitions might be presented to His Majesty in Council during the twelve months next after the date of the said Order should be referred to the Judicial Committee and that the said Judicial Committee should proceed to hear and

report upon all such Appeals or Complaints in like manner as if each such Appeal had been referred to the said Judicial Committee by a Special Order of His Majesty in Council and that the said Order should remain in force for the space of twelve months from the date thereof unless His Majesty should be pleased previously to rescind the same:

8 Edw. 7. c. 51.

And whereas by Section 5 of the Appellate Jurisdiction Act, 1908 it is enacted that "His Majesty may from time to time by "Order in Council make a General Order directing that all Appeals "shall be referred to the Judicial Committee of the Privy Council "until the Order is rescinded and Section 9 of 'The Judicial Com- "mittee Act, 1844' shall have effect as if any such General Order "for the time being in force were substituted in the first proviso to "that Section for the Annual Order therein referred to and the time "for which the Order remains in force were substituted for the "twelve months next after the making of the General Order" and that "the expression 'Appeals' in this Section means Appeals on "Petitions presented to His Majesty in Council and includes any "Complaints in the nature of Appeals and any Petitions in the "matter of Appeals":

Now therefore His Majesty is pleased by and with the advice of His Privy Council to order and it is hereby ordered that His Majesty's said Order in Council dated the 21st day of November 1908 be and the same is hereby rescinded and that all Appeals on which Petitions may be presented to His Majesty in Council after the date of this Order shall be referred to the Judicial Committee of the Privy Council until His Majesty shall be pleased to rescind this Order and that the said Judicial Committee shall proceed to hear and report upon all such Appeals in like manner as if each such Appeal had been referred to the said Judicial Committee by a Special Order of His Majesty in Council.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

Almeric FitzRoy.

ORDER IN COUNCIL REGULATING APPEALS TO HIS MAJESTY IN COUNCIL FROM THE COURT OF APPEAL AND FROM THE SUPREME COURT OF NEW ZEALAND.

1910 No. 70 (L.3)

At the Court at Buckingham Palace, the 10th day of January, 1910

PRESENT,

The King's Most Excellent Majesty in Council.

7 & 8 Vict. c. 69.

Whereas by an Act passed in a session of Parliament held in the seventh and eighth years of Her late Majesty's reign (shortly

entitled "The Judicial Committee Act, 1844"), it was enacted that it should be competent to Her Majesty by any Order or Orders in Council to provide for the admission of Appeals to Her Majesty in Council from any judgments, sentences, decrees, or orders of any Court of Justice within any British Colony or Possession abroad although such Court should not be a Court of Error or a Court of Appeal within such Colony or Possession, and to make provision for the instituting and prosecuting of such Appeals and for carrying into effect any such decisions or sentences as Her Majesty in Council should pronounce thereon:

And whereas by an Order in Council dated the tenth day of May, 1860, provision was made for direct Appeals from the Supreme Court of New Zealand to Her Majesty in Council:

And whereas by an Order in Council dated the sixteenth day of May, 1871, provision was made for Appeals from the Court of Appeal of New Zealand to her Majesty in Council:

And whereas it is expedient with a view to equalizing as far as may be the conditions under which His Majesty's subjects in the British Dominions beyond the Seas shall have a right of Appeal to His Majesty in Council and to promoting uniformity in the practice and procedure in all such Appeals that the said Orders in Council dated the tenth day of May, 1860, and the sixteenth day of May, 1871, should be revoked and new provision made for Appeals from the said Supreme Court and the said Court of Appeal to His Majesty in Council:

It is hereby ordered by the King's Most Excellent Majesty, by and with the advice of His Privy Council, that the said Orders in Council be and the same are hereby revoked and that instead thereof the Rules hereunder set out shall regulate all Appeals to His Majesty in Council from the Dominion of New Zealand.

1. In these Rules, unless the context otherwise requires:—
"Appeal" means Appeal to His Majesty in Council;
"His Majesty" includes His Majesty's Heirs and Successors;
"Judgment" includes decree, order, sentence, or decision, whether in the exercise of the appellate or original jurisdiction of the Court, and whether in a proceeding removed into the Court from any other Court or on a case stated for the opinion of the Court or otherwise howsoever;
"Court" means Court appealed from, being either the Court of Appeal of New Zealand or the Supreme Court of New Zealand as the case may be;
"Court of Appeal" means the Court of Appeal of New Zealand;
"Supreme Court" means the Supreme Court of New Zealand;
"Record" means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence, and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal;
"Registrar" means the Registrar or other proper officer having the custody of the Records in the Court appealed from;

"Month" means calendar month;
Words in the singular include the plural, and words in the plural include the singular.

2. Subject to the provisions of these Rules, an Appeal shall lie:—

(*a*) as of right, from any final Judgment of the Court of Appeal where the matter in dispute on the Appeal amounts to or is of the value of five hundred pounds sterling or upwards, or where the Appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of five hundred pounds sterling or upwards; and

(*b*) at the discretion of the Court of Appeal from any other Judgment of that Court, whether final or interlocutory, if, in the opinion of that Court, the question involved in the Appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to His Majesty in Council for decision.

(*c*) At the discretion of the Supreme Court from any final Judgment of that Court if in the opinion of that Court the question involved in the Appeal is one which by reason of its great general or public importance or of the magnitude of the interests affected or for any other reason, ought to be submitted to His Majesty in Council for decision.

3. Where in any action or other proceeding no final Judgment can be duly given in consequence of a difference of opinion between the Judges, the final Judgment may be entered *pro formâ* on the application of any party to such action or other proceeding according to the opinion of the Chief Justice, or in his absence, of the senior puisne Judge of the Court, but such Judgment shall only be deemed final for purposes of an Appeal therefrom, and not for any other purpose.

4. Applications to the Court for leave to appeal shall be made by motion in Court at the time when Judgment is given or by notice of motion filed in the Court and served on the opposite party in accordance with the rules or practice of the Court within twenty-one days after the date of the Judgment appealed from.

5. Leave to appeal under Rule 2 shall only be granted by the Court in the first instance:—

(*a*) upon condition of the Appellant, within a period to be fixed by the Court, but not exceeding three months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding five hundred pounds, for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal (as the case may be); and

(*b*) upon such other conditions (if any) as to the time or times within which the Appellant shall take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

6. Where the Judgment appealed from requires the Appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said Judgment shall be carried into execution or that the execution thereof shall be suspended pending the Appeal, as to the Court shall seem just. And in case the Court shall direct the said Judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as His Majesty in Council shall think fit to make thereon.

7. The preparation of the Record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

8. The Registrar, as well as the parties and their legal Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the Appeal, and generally to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the Record.

9. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record as finally printed (whether in New Zealand or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

10. The Record shall be printed in accordance with the Rules set forth in the Schedule hereto. It may be so printed either in New Zealand or in England.

11. Where the Record is printed in New Zealand the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council forty copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof, and by affixing thereto the seal of the Court.

12. Where the Record is to be printed in England, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council, one certified copy of such Record, together with an index of all the papers and exhibits in the Case. No other

certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

13. Where part of the Record is printed in New Zealand and part is to be printed in England, Rules 11 and 12 shall, as far as practicable, apply to such parts as are printed in New Zealand and such as are to be printed in England respectively.

14. The reasons given by the Judge, or any of the Judges, for or against any Judgment pronounced in the course of the proceedings out of which the Appeal arises shall by such Judge or Judges be communicated in writing to the Registrar and shall by him be transmitted to the Registrar of the Privy Council at the same time when the Record is transmitted.

15. Where there are two or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the Appeals should be consolidated, the Court may direct the Appeals to be consolidated and grant leave to appeal by a single order.

16. An Appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his Appeal on such terms as to costs and otherwise as the Court may direct.

17. Where an Appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the Respondent, rescind the order granting conditional leave to appeal, notwithstanding the Appellant's compliance with the conditions imposed by such order, and may give such directions as to the costs of the Appeal and the security entered into by the Appellant as the Court shall think fit, or make such further or other order in the premises as in the opinion of the Court the justice of the case requires.

18. On an application for final leave to appeal, the Court may inquire whether notice, or sufficient notice, of the application has been given by the Appellant to all parties concerned, and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as in the opinion of the Court the justice of the case requires.

19. An Appellant who has obtained final leave to appeal shall prosecute his Appeal in accordance with the Rules for the time being regulating the general practice and procedure in Appeals to His Majesty in Council.

20. Where an Appellant, having obtained final leave to appeal, desires, prior to the despatch of the Record to England, to withdraw his Appeal, the Court may, upon an application in that behalf made by the Appellant, grant him a certificate to the effect that the Appeal has been withdrawn, and the Appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the costs of

the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

21. Where an Appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the Record to England, the Respondent may, after giving the Appellant due notice of his intended application, apply to the Court for a certificate that the Appeal has not been effectually prosecuted by the Appellant, and if the Court sees fit to grant such a certificate, the Appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

22. Where at any time between the order granting final leave to appeal and the despatch of the Record to England the Record becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the Record in place of, or in addition to, the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express Order of His Majesty in Council.

23. Where the Record subsequently to its despatch to England becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the Record, in place of, or in addition to, the party who has died or undergone a change of status.

24. The Case of each party to the Appeal may be printed either in New Zealand or in England, and shall in either event be printed in accordance with the Rules set forth in the Schedule hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the Counsel who attends at the hearing of the Appeal, or by the party himself if he conducts his Appeal in person.

25. The Case shall consist of paragraphs numbered consecutively, and shall state, as concisely as possible, the circumstances out of which the Appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the Record as printed shall, as far as practicable, be printed in the margin, and care shall be taken to avoid, as far as possible, the reprinting in the Case of long extracts from the Record. The taxing officer, in taxing the costs of the Appeal, shall, either of his own motion or at the instance of the opposite party, inquire into any unnecessary prolixity in the Case, and shall disallow the costs occasioned thereby.

26. Where the Judicial Committee directs a party to bear the costs of an Appeal incurred in New Zealand such costs shall be taxed by the Registrar or other proper officer of the Court in accordance with the Rules or practice for the time being regulating taxation in the Court.

27. Any Order which His Majesty in Council may think fit to make on an Appeal from a Judgment of the Court of Appeal or Supreme Court shall be executed by all Courts in like manner as any original Judgment of the Court appealed from should or might have been executed.

28. Nothing in these Rules contained shall be deemed to interfere with the right of His Majesty, upon the humble Petition of any person aggrieved by any Judgment of the Court, to admit his Appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose.

Almeric FitzRoy.

Schedule

I. Records and Cases in Appeals to His Majesty in Council shall be printed in the form known as Demy Quarto (i.e., 54 ems in length and 42 in width).

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter and notes.

IV. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

The New Zealand (Appeals to the Privy Council) (Amendment) Order 1972

Made - - - - *20th December* 1972

Coming into Operation *20th December* 1972

At the Court at Buckingham Palace, the 20th day of December 1972

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 1 of the Judicial Committee Act 1844 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the New Zealand (Appeals to the Privy Council) (Amendment) Order 1972 and shall be construed as one with the Order in Council dated 10th January 1910 regulating appeals to Her Majesty in Council from the Court of

Appeal and from the Supreme Court of New Zealand, which Order is hereinafter referred to as "the principal Order".

(2) This Order and the principal Order may be cited together as the New Zealand (Appeals to the Privy Council) Orders 1910 and 1972.

2. The Interpretation Act 1889 shall apply for the purposes of interpreting this Order as it applies for the purposes of interpreting an Act of Parliament.

3. Paragraph (*a*) of Rule 2 of the Rules contained in the principal Order is hereby amended by the substitution for the words "five hundred pounds sterling", in both places where they occur, of the words "five thousand New Zealand dollars".

4. Paragraph (*a*) of Rule 5 of the Rules contained in the principal Order is hereby amended by the substitution for the words "five hundred pounds" of the words "two thousand New Zealand dollars".

W. G. Agnew.

The Judicial Committee (General Appellate Jurisdiction) Rules Order 1982

Made - - - - *24th November* 1982

Coming into Operation *7th February* 1983

At the Court at Buckingham Palace the 24th day of November 1982

Present,

The Queen's Most Excellent Majesty in Council

Whereas there was this day read at the Board a representation from the Judicial Committee of the Privy Council recommending that the Judicial Committee Rules 1957 relating to the practice and procedure in accordance with which the general appellate jurisdiction of Her Majesty in Council is exercised ought to be revoked and that new Rules thereunto annexed ought to be substituted therefor:

Now, therefore, Her Majesty, having taken the said representation into consideration, and in exercise of the powers conferred upon Her by section 24 of the Judicial Committee Act 1833 or otherwise in Her vested, is pleased, by and with the advice of Her Privy Council, to approve thereof and to order, and it is hereby ordered, as follows:—

1. The Judicial Committee Rules 1957 as amended are hereby revoked and the Rules set out in Schedule II to this Order are substituted therefor.

2. This Order may be cited as the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 and shall come into operation on 7th February 1983.

3. The Rules set out in Schedule II to this Order may be cited as the Judicial Committee (General Appellate Jurisdiction) Rules and subject to any Statute or Statutory Instrument to the contrary shall apply to all matters falling within the appellate jurisdiction of Her Majesty in Council.

4. The words "Judicial Committee (General Appellate Jurisdiction) Rules" shall be substituted for the words "Judicial Committee Rules 1957" or the words "Rules set out in the Schedule to the Order in Council dated 20th December 1957" wherever those words appear in the Statutory Instruments listed in Schedule I to this Order.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE I

The Malaysia (Appeals to Privy Council) Order 1978.

The Republic of Singapore (Appeals to Judicial Committee) Orders 1966 and 1969.

The Judicial Committee (Medical Rules) Order 1980.

The Judicial Committee (Dentists Rules) Order 1958.

The Judicial Committee (Veterinary Surgeons Rules) Order 1967.

The Judicial Committee (Opticians Rules) Order 1960.

The Judicial Committee (Professions Supplementary to Medicine Rules) Order 1964.

SCHEDULE II

Arrangement of rules

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20. Inspection of Record by parties.
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66. Case notice.
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Binding Record, &c.

68. Mode of binding Record, &c., for use of Judicial Committee.

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69. List of authorities to be lodged.
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71. Notice to parties of day fixed for hearing appeal.
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75. Taxation of costs.
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77. Order to tax.
78. Power of taxing officer where taxation delayed through the fault of the party whose costs are to be taxed.
79. Appeal from decision of taxing officer.
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Schedule A. Rules as to reproduction of documents.

Schedule B. I. Scale of costs allowed.
II. Council Office fees.

RULES

Interpretation

1.—(1) In these Rules, unless the context otherwise requires:—
"Abroad" means the country or place where the Court appealed from is situated;
"Agent" means a solicitor qualified by virtue of Her late Majesty's Order in Council of the 6th March 1896 to conduct proceedings before Her Majesty in Council on behalf of another;
"Appeal" means an appeal to Her Majesty in Council;
"Judgment" includes decree, order, sentence, or decision of any Court, judge or judicial officer;
"Party" and all words descriptive of parties to proceedings before Her Majesty in Council (such as "petitioner", "appellant", "respondent") mean, in respect of all acts proper to be done by an agent, the agent of the party in question where such party is represented by an agent;
"Pending appeal" means an appeal in respect of which the Record has been registered in the Registry;
"Proper officer" means the registrar or other proper officer of the Court appealed from;
"Record" means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, judgments and order granting leave to appeal) proper to be laid before Her Majesty in Council on the hearing of the appeal;
"Registrar" means the Registrar of the Privy Council;
"Registry" means the Registry of the Privy Council, Downing Street, London;
"Respondent" includes intervener.

(2) Where by these Rules any step is required to be taken in England in connection with proceedings before Her Majesty in Council, whether in the way of lodging a document, entering an appearance, lodging security, or otherwise, such step shall be taken in the Registry.

Leave to appeal

Leave to appeal generally

2. No appeal shall be admitted unless either—
(a) leave to appeal has been granted by the Court appealed from; or
(b) in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council.

Special leave to appeal

Form of petition for special leave to appeal

3.—(1) A petition for special leave to appeal shall—
(a) state succinctly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise Her Majesty whether such leave ought to be granted;
(b) deal with the merits of the case only so far as is necessary to explain the grounds upon which special leave to appeal is sought; and
(c) be signed by the Counsel who attends at the hearing or by the party himself if he appears in person.

(2) A petition for special leave to appeal may include a prayer for special leave to appeal as a poor person.

Six copies of petition to be lodged together with affidavits in support

4. A petitioner for special leave to appeal shall lodge—

(a) six copies of the petition and of the judgment from which special leave to appeal is sought;

(b) an affidavit in support of the petition as prescribed by rule 50;

(c) unless a caveat as prescribed by rule 48 has been lodged by the other parties who appeared in the Court below, an affidavit of service upon such parties of notice of the intended application.

Time for lodging petition

5. A petition for special leave to appeal shall be lodged with the least possible delay after the date of the judgment from which special leave to appeal is sought.

Security for costs and transmission of Record

6.—(1) Where the Judicial Committee agree to advise Her Majesty to grant special leave to appeal, they shall, in their Report—

(a) specify the amount of the security for costs (if any) to be lodged by the petitioner; and

(b) subject to paragraph (3), provide for the transmission of the Record by the proper officer to the Registrar and for such further matters as may be necessary.

(2) Unless otherwise ordered, the security for costs shall be lodged before the appellant enters an appearance.

(3) Where an appeal has been admitted by Order of Her Majesty in Council granting special leave to appeal and an authenticated copy of the Record was produced upon the hearing of the petition for such special leave, then if the Order in Council so provides, such copy may be accepted as the Record proper to be laid before Her Majesty on the hearing of the appeal and the provisions of rule 14 shall not apply.

General provisions

7. Save as otherwise provided by rules 3 to 6, the provisions of rules 47 to 50 and 52 to 59 shall apply to petitions for special leave.

Petition for special leave to appeal as a poor person

8. A petitioner who seeks special leave to appeal as a poor person shall lodge together with his petition—

(a) an affidavit that he is not worth £500 apart from his wearing apparel and his interest in the subject-matter of the appeal and that he is unable to provide sureties; and

(b) a certificate of Counsel that the petitioner has reasonable ground of appeal.

Exemption of poor person appellant from lodging security and paying Office fees

9. Where a petitioner has obtained special leave to appeal as a poor person he shall not be required to lodge security for the costs of the respondent or to pay any Council Office fees.

Exemption of unsuccessful petitioner for leave to appeal as a poor person from payment of Office fees

10. A petitioner whose petition for special leave to appeal as a poor person is dismissed may, if Her Majesty in Council so orders, be excused from paying any Council Office fees in respect of that petition.

Record and appearance by appellant

Record to be transmitted without delay

11.—(1) As soon as the appeal has been admitted, whether by an order of the Court appealed from or by an Order of Her Majesty in Council granting special leave to appeal (unless in such case the said Order in Council otherwise provides), the appellant shall without delay take all necessary steps to have the Record transmitted to the Registrar.

(2) The proper officer shall, as soon as the Record is so transmitted, certify to the Registrar that the respondent has received notice, or is otherwise aware of—

(a) the order of the Court appealed from granting leave to appeal or of Her Majesty in Council granting special leave to appeal; and

(b) the dispatch of the Record to the Registrar.

(3) If an appellant who has obtained special leave to appeal fails to have the Record transmitted promptly to the Registrar the Registrar may—

(a) call upon the appellant to explain his default; and

(b) in the absence of any, or any sufficient, explanation of the default, summon the appellant to show cause before the Judicial Committee why the special leave to appeal should not be rescinded.

(4) On the hearing of a summons issued under paragraph (3), the respondent shall be entitled to be heard and to apply for costs or other relief.

(5) The Judicial Committee may, after considering any such summons, recommend to Her Majesty to rescind the grant of special leave to appeal or may give such directions as the justice of the case may require.

Reproduction of Record

12.—(1) The Record may be reproduced either abroad or in England.

(2) The reproduction shall comply with the provisions contained in Schedule A hereto.

Number of copies to be transmitted where Record reproduced abroad

13.—(1) Where the Record is reproduced abroad, the proper officer shall, at the expense of the appellant, transmit to the Registrar 30 copies, one of which he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal, if any, of the Court appealed from.

(2) If on the arrival in the Registry of a Record which has been reproduced abroad it is found that it has not been reproduced in accordance with these Rules, the Registrar may direct that it be rearranged or that further copies be reproduced as may be necessary.

One certified copy to be transmitted where Record to be reproduced in England

14.—(1) Where the Record is to be reproduced in England the proper officer shall, at the expense of the appellant, transmit to the Registrar one certified copy, together with an index of all the papers and exhibits in the case.

(2) No other certified copies of the Record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

Record to include order granting leave

15. The order of the Court appealed from granting leave to appeal, or the Order of Her Majesty in Council granting special leave to appeal, as the case may be, shall be included in the Record.

Reasons for judgments to be included

16. There shall be included in the Record the reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises.

Exclusion of unnecessary documents from Record

17.—(1) The proper officer, as well as the parties, shall endeavour to exclude from the Record all documents which are merely formal and are not relevant to the subject-matter of the appeal and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the repetition of documents and headings and other merely formal parts of documents.

(2) Documents excluded from the Record shall be enumerated in a list to be transmitted with the Record.

Documents objected to to be indicated

18. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record as finally reproduced shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index or elsewhere, the fact that, and the party by whom, the inclusion of the document was objected to.

Registration and numbering of Records

19.—(1) As soon as the Record is received in the Registry it shall be registered with the date of arrival, the names of the parties and the description whether "reproduced" or "not reproduced".

(2) Appeals shall be numbered consecutively in each year in the order in which the Records are received in the Registry.

Inspection of Record by parties

20. The parties shall be entitled to inspect the Record and to extract all necessary particulars therefrom for the purpose of entering an appearance.

Appearance by appellant

21. The appellant shall enter an appearance before taking any further step in the prosecution of the appeal, and after entering such appearance, shall forthwith give notice thereof to the respondent, if the latter has entered an appearance.

Time within which appellant shall enter an appearance

22. Where the Record arrives in the Registry not having been reproduced, the appellant shall enter an appearance and bespeak at his expense a copy of the Record, or of such parts thereof as he may require—

(a) within two months of its arrival, or

(b) in a case to which rule 6 (3) applies, within one month from the date of the Order in Council granting special leave to appeal.

Preparation of copy of Record for reproduction

23.—(1) As soon as the appellant has entered an appearance and obtained any copy of the Record bespoken by him, he shall arrange the documents in suitable order, check the index, insert marginal notes and generally do what is required to prepare the copy for reproduction in accordance with Schedule A hereto.

(2) If the respondent has entered an appearance, the appellant shall send him the copy of the Record, as prepared for reproduction, for his approval.

(3) In the event of the parties being unable to agree, the matter shall be referred to the Registrar who may himself give directions or may, if he thinks fit, require the parties to attend before the Judicial Committee.

Lodging copy of Record for reproduction

24. As soon as the parties have agreed the Record, the appellant shall lodge it for reproduction by a person or firm selected by the Registrar and on being notified of the estimated cost of reproduction shall lodge the same.

Special case

25.—(1) Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar, may submit such question to the Judicial Committee in the form of a special case, and reproduce such parts only of the Record as may be necessary to enable the question to be argued.

(2) Nothing contained in sub-paragraph (1) shall in any way prevent the Judicial Committee from ordering full argument on the whole case, if they shall so think fit.

Examination of proof of Record and striking off copies

26.—(1) The Registrar shall, as soon as proofs of the Record are ready, give notice to every party who has entered an appearance requesting them to attend at the Registry to examine the proofs and compare them with the certified Record, and shall, for that purpose, furnish every such party with one proof.

(2) After such examination has been completed, the appellant shall, without delay, lodge his proof duly corrected and (so far as necessary) approved by the respondent and the Registrar shall thereupon cause at least 30 copies of the Record to be struck off from such proof.

Number of copies of Record for parties

27. Each party who has entered an appearance shall be entitled to receive, for his own use, five copies of the Record.

How costs of reproduction of Record are to be borne

28.—(1) Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the reproduction of the Record shall form part of the costs of the appeal.

(2) The costs of and incidental to the reproduction of any document objected to by one party, in accordance with rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the Record.

Petition of appeal

Time within which petition shall be lodged

29. The appellant shall lodge his petition of appeal—

(a) where the Record arrives in the Registry having been reproduced, within two months of such arrival;

(b) where the Record arrives in the Registry not having been reproduced, within one month from completion of the reproduction thereof: or, in a case to which the provisions of rule 6(3) apply, within a period of fourteen days from completion of the production of the Record:

Provided that nothing in this rule shall preclude the appellant from lodging his petition of appeal prior to the arrival of the Record, or the completion of the production, if there are special reasons why, in the opinion of the Registrar, it is desirable for him to do so.

Form of petition of appeal

30. The petition of appeal shall—

(a) be in the form prescribed by rule 47(1);

(b) recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the appeal from the commencement thereof down to the admission of the appeal;

(c) not contain argumentative matter or travel into the merits of the case.

Service of petition

31. The appellant shall, after lodging his petition of appeal, serve a copy on the respondent, as soon as the latter has entered an appearance, and shall endorse such copy with the date of the lodgment.

Withdrawal of appeal

Withdrawal of appeal before petition of appeal has been lodged

32.—(1) Where an appellant, who has not lodged his petition of appeal, wishes to withdraw his appeal he shall give notice to the Registrar.

(2) The Registrar shall forthwith by letter notify the proper officer that the appeal has been withdrawn and the appeal shall thereupon stand dismissed without further order.

Withdrawal of appeal after petition of appeal has been lodged

33.—(1) Where an appellant, who has lodged his petition of appeal, wishes to withdraw his appeal, he shall present a petition to that effect to Her Majesty in Council.

(2) On the hearing of any such petition a respondent who has entered an appearance in the appeal shall, subject to any agreement between him and the appellant to the contrary, be entitled to apply to the Judicial Committee for his costs.

Non-prosecution of appeal

Dismissal of appeal where appellant takes no step in prosecution thereof

34.—(1) Where an appellant takes no step in the prosecution of his appeal within two months from the arrival of the Record in England, or, in a case to which rule 6(3) applies, within one month from the date of the Order in Council granting special leave, the Registrar shall with all convenient speed by letter notify the proper officer that the appeal has not been prosecuted and the appeal shall thereupon stand dismissed for non-prosecution without further order.

(2) A copy of the said letter shall be sent by the Registrar to any respondent who has entered an appearance in the appeal.

Dismissal of appeal for non-prosecution after appellant's appearance and before lodgment of petition of appeal

35.—(1) Where an appellant who has entered an appearance—

(a) fails to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the reproduction of the Record; or

(b) fails to lodge his petition of appeal within the periods respectively prescribed by rule 29;

the Registrar shall call upon him to explain his default.

(2) If no explanation is offered, or if the explanation offered is, in the opinion of the Registrar, insufficient, the Registrar shall, with all convenient speed, by letter notify the proper officer that the appeal has not been effectively prosecuted, and the appeal shall thereupon stand dismissed for non-prosecution.

(3) A copy of the said letter shall be sent by the Registrar to every party who has entered an appearance in the appeal.

Dismissal of appeal for non-prosecution after lodgment of petition of appeal

36.—(1) Where an appellant, who has lodged his petition of appeal, fails thereafter to prosecute his appeal with due diligence, the Registrar shall call upon him to explain his default.

(2) If no explanation is offered, or if the explanation offered is, in the opinion of the Registrar, insufficient, the Registrar shall issue a summons to the appellant calling upon him to show cause before the Judicial Committee why the appeal should not be dismissed for non-prosecution:

Provided that no such summons shall be issued before the expiration of one year from the arrival of the Record in the Registry.

(3) A copy of the summons shall be sent to the respondent if he has entered an appearance in the appeal and he shall be entitled to be heard at the hearing of the summons and to ask for his costs and other relief.

(4) The Judicial Committee may, after considering the matter, recommend to Her Majesty that the appeal be dismissed for non-prosecution, or give such other directions therein as the justice of the case may require.

Restoring an appeal dismissed for non-prosecution: Costs

37.—(1) An appellant whose appeal has been dismissed for non-prosecution may present a petition to Her Majesty in Council praying that his appeal may be restored.

(2) Where an appeal has been dismissed under rules 32, 34 or 35, a respondent who has entered an appearance before such dismissal may apply to the Judicial Committee for an order for costs.

Appearance by respondent

Time within which respondent may appear

38.—(1) The respondent may enter an appearance at any time between the arrival of the Record and the hearing of the appeal.

(2) If the respondent unduly delays entering an appearance he shall, unless the Judicial Committee otherwise direct, bear, or be disallowed, the costs occasioned by such delay.

Notice of appearance by respondent

39. The respondent shall after entering an appearance forthwith give notice thereof to the appellant, if the latter has entered an appearance.

Form of appearance where all the respondents do not appear

40. Where there are two or more respondents, of whom not all enter an appearance, the appearance form shall set out the names of those who do enter an appearance.

Separate appearances

41. Two or more respondents may, at their own risk as to costs, enter separate appearances in the same appeal.

Non-appearing respondent not entitled to receive notices or lodge case

42. A respondent who has not entered an appearance shall not be entitled to receive from the Registrar any notices relating to the appeal, nor be allowed to lodge a case in the appeal.

Procedure on non-appearance of respondent

43.—(1) Subject to any order of the Judicial Committee to the contrary, the following provisions of this rule shall apply where a respondent fails to enter an appearance in the appeal.

(2) If the Registrar is satisfied by a certificate under rule 11(2) or otherwise that the non-appearing respondent has received notice, or is otherwise aware, that the appeal has been admitted and that the Record has been dispatched to England, the appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the non-appearing respondent at any time after the expiration of two months from the lodging of the petition of appeal.

(3) Where it is shown to the satisfaction of the Registrar, by affidavit or otherwise, either that an appellant has made every reasonable endeavour to serve a respondent with the notices mentioned in paragraph (2) and has failed to effect such service, or that it is not the intention of the respondent to enter an appearance to the appeal, the appeal may, without further order in that behalf and at the risk of the appellant, be proceeded with *ex parte* as against the non-appearing respondent.

Respondent defending appeal as a poor person

44. A respondent who desires to defend an appeal as a poor person may present a petition to that effect to Her Majesty in Council, which Petition shall be accompanied by an affidavit from him stating that he is not worth £500 apart from his wearing apparel and his interest in the subject-matter of the appeal.

Petitions generally

Mode of addressing petitions

45.—(1) All petitions for orders or directions as to matters of practice or procedure not involving any change in the parties to an appeal shall be addressed to the Judicial Committee.

(2) All other petitions shall be addressed to Her Majesty in Council, but a petition which is properly addressed to Her Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

Orders on petitions which need not be drawn up

46. Where an order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not, unless the Committee otherwise direct, be necessary to draw up such order, but a note thereof shall be made by the Registrar.

Form of petition and number of copies to be lodged

47.—(1) All petitions shall consist of paragraphs numbered consecutively and be endorsed with the name of the Court appealed from, the full title and Privy Council number of the appeal to which the petition relates or the full title of the petition (as the case may be), and the name and address of the agent of the petitioner.

(2) Except as provided by rule 3, a petition need not be signed.

(3) Unless the petition is a consent petition within the meaning of rule 56, at least six copies shall be lodged.

Caveat

48.—(1) Where a petition which does not relate to any pending appeal is expected to be, or has been, lodged, any person claiming a right to appear before the Judicial Committee on the hearing of such petition may lodge a caveat relating thereto.

(2) A caveator shall be entitled to receive—

(*a*) from the Registrar, notice of the lodging of the petition, if the petition has not then been lodged; and

(*b*) from the petitioner, if and when the petition is lodged, a copy of the petition and (at his own expense) of any paper lodged by the petitioner in support of his petition.

(3) If the petition has been lodged, a caveator shall after lodging his caveat forthwith give notice to the petitioner.

Service of petition

49.—(1) Where a petition is lodged in the matter of any pending appeal, the petitioner shall service a copy thereof on every party who has entered an appearance.

(2) A party so served shall be entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition.

Verifying petition by affidavit

50.—(1) A petition not relating to any pending appeal, and any other petition containing allegations of fact which cannot be verified by reference to the registered Record or any certificate or duly authenticated statement of the Court appealed from, shall be supported by affidavit.

(2) Where the petitioner prosecutes his petition in person, the affidavit shall be sworn by the petitioner himself and shall state that, to the best of the deponent's knowledge, information and belief, the allegations contained in the petition are true.

(3) Where the petitioner is represented by an agent, the affidavit shall be sworn by the agent and shall, besides stating that, to the best of the deponent's knowledge, information and belief, the allegations contained in the petition are true, show how the deponent

obtained his instructions and the information enabling him to present the petition.

Petition for order of revivor or substitution

51. A petition for an order of revivor or substitution shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who, in the opinion of that Court, is the proper person to be substituted, or entered, on the Record in place of, or in addition to, a party who has died or undergone a change of status.

Petition disclosing no reasonable cause of appeal or containing scandalous matter to be refused

52. The Registrar may refuse to receive a petition on the ground that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter or fails to comply with the provision of rule 3, but the petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

Setting down petition

53. As soon as a petition and all necessary documents are lodged the petition shall thereupon be deemed to be set down.

Time within which set down petitions shall be heard

54. On each day appointed for the hearing of petitions the Registrar shall, unless the Judicial Committee otherwise direct, put in the list for hearing all such petitions as have been set down:

Provided that, in the absence of special urgency, no petition, if opposed, shall be put in the paper for hearing before the expiration of ten clear days from the lodging thereof, unless the opponent consents to the petition being heard earlier.

Notice to parties of day fixed for hearing petition

55. Subject to the provisions of the next following rule, the Registrar shall, as soon as a day has been appointed for the hearing of a petition, notify all parties concerned of the day so appointed.

Procedure where petition is consented to or is formal

56.—(1) Where the prayer of a petition is consented to in writing by the opposite party, or where a petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their report to Her Majesty on such petition or make their order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber.

(2) The Registrar shall in that event as soon as the Committee have made their report or order notify the parties that the report or order has been made and of its date and nature.

Withdrawal of petition

57.—(1) A petitioner who desires to withdraw his petition shall give notice in writing to that effect to the Registrar.

(2) Where the petition is opposed, the opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs.

Procedure where hearing of petition unduly delayed

58.—(1) Where a petitioner unduly delays bringing a petition to a hearing, the Registrar shall call upon him to explain the delay.

(2) If no explanation is offered, or if the explanation offered is, in the opinion of the Registrar, insufficient, the Registrar may, after notifying all parties interested of his intention to do so, list the petition for hearing on the next following day appointed for the hearing of petitions for such directions as the Judicial Committee may think fit.

59. At the hearing of a petition not more that one Counsel shall be admitted to be heard on a side.

Only one Counsel heard on a side in petitions

Case

60. No party to an appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his case in the appeal:

Lodging of case

Provided that a respondent who has entered an appearance but does not desire to lodge a case in the appeal may give the Registrar notice in writing of his intention not to lodge any case while reserving his right to address the Judicial Committee on the question of costs.

61. The case shall be reproduced in accordance with rule 1 of Schedule A hereto and shall be signed by at least one of the Counsel who attends at the hearing of the appeal or by the party himself if he conducts his appeal in person.

Reproduction

62. Each party shall lodge 20 copies of his case.

Number of copies to be lodged

63.—(1) The form of the case shall comply with the following requirements of this rule—

Form of case

(a) it shall consist of paragraphs numbered consecutively;

(b) it shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging it, and the reasons of appeal;

(c) references by page and line to the relevant portions of the Record as reproduced shall, as far as practicable, be reproduced in the margin;

(d) care shall be taken to avoid, as far as possible, the recital of long extracts from the Record.

(2) The taxing officer, in taxing the costs of the appeal, may, either of his own motion or at the instance of the opposite party, inquire into any unnecessary prolixity in the case and disallow the costs occasioned thereby.

64. Two or more respondents may, at their own risk as to costs, lodge separate cases in the same appeal.

Separate cases by two or more respondents

65. Each party shall, after lodging his case, forthwith give notice thereof to the other party.

Notice of lodgment of case

66.—(1) The party who lodges his case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by rule 65, serve such other party with a notice (in this rule called a "case notice") requiring him to lodge his own case within one month of the service of the case notice:

Case notice

Provided that no case notice shall be served until after the completion of the reproduction of the Record.

(2) If the party on whom a case notice has been served fails to comply therewith, the party who served the case notice may, at any time after the expiration of the time limited by the case notice, lodge an affidavit of service setting out the terms of the case notice and the appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default.

(3) Nothing shall preclude a party in default under paragraph (2) hereof from lodging his case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

Setting down appeal and exchanging cases

67.—(1) Subject to the provisions of rule 43 and of the last-preceding rule, an appeal shall be set down as soon as the cases on both sides are lodged.

(2) The parties shall thereupon exchange cases by handing one another five copies of their respective cases.

Binding Record, &c.

Mode of binding Record, &c., for use of Judicial Committee

68.—(1) As soon as an appeal is set down, the appellant shall obtain from the Registry seven copies of the Record and cases to be bound for the use of the Judicial Committee at the hearing and shall lodge the seven bound copies at the earliest possible date.

(2) The copies shall be bound with plastic comb binding in limp cornflower blue covers of fibre board substance.

(3) The front cover shall state the title and Privy Council number of the appeal, the contents of the volume, and the names and addresses of the agents.

(4) The several documents, indicated by incuts, shall be arranged in the following order—
(1) Appellant's case; (2) Respondent's case; (3) Record; (4) Supplemental Record (if any).

Hearing

List of authorities to be lodged

69. Not less than 3 clear days before the hearing of an appeal, each party shall lodge a written list of authorities to be cited at the hearing.

Notice of day on or before which appeals must be set down for ensuing sittings

70. The Registrar shall name a day on or before which appeals must be set down if they are to be entered in the list of business for the ensuing sittings.

Notice to parties of day fixed for hearing appeal

71. The Registrar shall, at the earliest possible date, notify every party to an appeal, who has entered an appearance, of the day appointed for the hearing of the appeal and the parties shall be in readiness to be heard on the day so appointed.

Only two counsel heard on a side in appeals

72. At the hearing of an appeal not more than two counsel shall be admitted to be heard on a side.

Nautical assessors

73. In Admiralty appeals the Judicial Committee may, if they think fit, require the attendance of two nautical assessors.

Judgment

Notice to parties of day fixed for delivery of judgment

74. Where the Judicial Committee, after hearing an appeal, decide to reserve judgment, the Registrar shall in due course notify the parties of the day appointed for the delivery of the judgment.

Costs

Taxation of costs

75. All bills of costs under the orders of the Judicial Committee shall be taxed by the Registrar, or such other person as the Judicial Committee may appoint, and all such taxations shall be regulated by the scale set forth in Part I of Schedule B hereto.

What costs taxed in England

76. The taxation of costs in England shall be limited to costs incurred in England.

Order to tax

77.—(1) The Registrar shall, as soon as possible after the Judicial Committee have given their decision as to the costs of an appeal, petition or other matter, issue to the party to whom costs have been awarded an order to tax and a notice specifying the day and hour appointed by him for taxation.

(2) The party receiving such order and notice shall, not less than 4 clear days before the time appointed for taxation, lodge his bill of costs (together with all necessary vouchers for disbursements) and serve the opposite party with a copy thereof and of the order and notice.

Power of taxing officer where taxation delayed through the fault of the party whose costs are to be taxed

78. Any party who fails to lodge his bill of costs (together with all necessary vouchers for disbursements) within the time prescribed by the last-preceding rule, or who in any way delays or impedes a taxation, may be disallowed the charges to which such party would otherwise be entitled for drawing his bill of costs and attending the taxation.

Appeal from decision of taxing officer

79.—(1) Any party aggrieved by a taxation may appeal to the Judicial Committee.

(2) The appeal shall be heard by way of motion, and the party appealing shall give three clear days' notice of motion to the opposite party, and shall also leave a copy of such notice in the Registry.

Amount of taxed costs to be inserted in Her Majesty's Order in Council

80. The amount allowed on the taxation shall, subject to any appeal to the Judicial Committee, be inserted in Her Majesty's Order in Council determining the appeal or petition:

Provided that, where such taxation has not been completed before the date of Her Majesty's said Order in Council, the Registrar may issue a certificate of the amount allowed.

Taxation on the poor person scale

81.—(1) Where the Judicial Committee directs costs to be taxed on the poor person scale, the taxing officer shall—

(a) not allow any fees of Counsel, and

(b) only award to the agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary appeals.

(2) The poor person scale shall apply to and include the application upon which leave to appeal as a poor person was granted.

Security to be dealt with as Her Majesty's Order in Council determining appeal directs

82. Where the appellant has lodged security for the respondent's costs of an appeal in the Registry, the Registrar shall deal with such security in accordance with the directions contained in Her Majesty's Order in Council determining the appeal.

Miscellaneous

Power to excuse from compliance with Rules

83.—(1) The Registrar may give such directions in matters of practice and procedure as may be just and expedient and may for sufficient cause shown excuse the parties from compliance with any of the requirements of these Rules.

(2) If in the opinion of the Registrar it is desirable that any application for such direction or such excusal should be dealt with by the Judicial Committee in open Court he may direct the applicant to lodge in the Registry, and to serve the opposite party with, a notice of motion returnable before the Committee.

(3) Any party aggrieved by a direction given by the Registrar may appeal, by way of motion, to the Judicial Committee.

Amendment of documents

84.—(1) Any document lodged in connection with an appeal, petition or other matter pending before Her Majesty in Council or the Judicial Committee may be amended by leave of the Registrar.

(2) If the Registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open Court, he may direct the applicant to lodge in the Registry, and to serve the opposite party with, a notice of motion returnable before the Committee.

Affidavits may be sworn before the Registrar

85. Affidavits relating to any appeal, petition or other matter pending before Her Majesty in Council or the Judicial Committee may be sworn before the Registrar.

Change of agent

86.—(1) Where a party to an appeal, petition or other matter pending before Her Majesty in Council changes his agent, such party, or the new agent, shall forthwith give the Registrar and the outgoing agent notice of the change, and shall amend the appearance accordingly.

(2) Unless such notices are given the former agent shall be considered the agent of the party until the final conclusion of the appeal, petition or other matter.

SET-OFF ACT 1728
(2 Geo. 2, c. 22)

An Act for the relief of debtors with respect to the imprisonment of their persons.

13. Mutual debts to be set one against the other.

Where there are mutual Debts between Plaintiff and Defendant, or if either Party ſue or be ſued as Executor or Adminiſtrator, where there mutual Debts between the Teſtator or Inteſtate and either Party, one Debt may be ſet againſt the other, and ſuch Matter may be given in Evidence upon the General Iſſue, or pleading in Bar, as the Nature of the Caſe ſhall require, ſo as at the Time of his pleading the General Iſſue, where any ſuch Debt of the Plaintiff, his Teſtator or Inteſtate, is intended to be inſiſted on in Evidence, Notice ſhall be given of the particular Sum or Debt ſo intended to be inſiſted on, and upon what Account it became due, or otherwiſe ſuch Matter ſhall not be allowed in Evidence upon ſuch General Iſſue.

SET-OFF ACT 1734
(2 Geo. 2, c. 22)

An Act to explain and amend an Act passed in the second Year of the Reign of his present Majesty, intitled, An Act for the relief of debtors with respect to the imprisonment of their persons.

4. The clause in the first recited act relating to mutual debts made perpetual.

And whereas the Proviſion for ſetting mutual Debts one againſt the other, is highly juſt and 'reaſonable at all Times;' Be it therefore further enacted by the Authority aforeſaid, That the ſaid Clauſe in the ſaid firſt recited Act, for ſetting mutual Debts one againſt the other, ſhall be and remain in full Force for ever.

5. Exception.

And be it further enacted and declared by the Authority aforeſaid, That by virtue of the ſaid Clauſe in the ſaid firſt recited Act contained, and hereby made perpetual, mutual Debts may be ſet against each other, either by being pleaded in Bar, or given in Evidence on the General Iſſue, in the Manner therein mentioned, notwithſtanding that ſuch Debts are deemed in Law to be of a different Nature; unleſs in Caſes where either of the ſaid Debts ſhall accrue by reaſon of a Penalty contained in any Bond or Specialty; and in all Caſes where either the Debt for which the Action hath been or ſhall be brought, or the Debt intended to be ſet againſt the ſame hath accrued, or ſhall accrue, by reaſon of any ſuch Penalty, the Debt intended to be ſet off, ſhall be pleaded

in Bar, in which Plea ſhall be ſhown how much is truly and juſtly due on either Side; and in caſe the Plaintiff ſhall recover in any ſuch Action or Suit, Judgment ſhall be entred for no more than ſhall appear to be truly and juſtly due to the Plaintiff, after one Debt being ſet againſt the other as aforeſaid.

THE CALENDAR (NEW STYLE) ACT 1750
(24 Geo. 2 c. 23)

An Act for regulating the Commencement of the Year, and for correcting the Calendar now in use

WHEREAS the legal supputation of the year of our Lord in that part of Great Britain called England, according to which the year beginneth on the twenty-fifth day of March, hath been found by experience to be attended with divers inconveniences, not only as it differs from the usage of neighbouring nations, but also from the legal method of computation in that part of Great Britain called Scotland, and from the common usage throughout the whole kingdom, and thereby frequent mistakes are occasioned in the dates of deeds and other writings, and disputes arise therefrom: And whereas the calendar now in use throughout all his Majesty's British dominions, commonly called The Julian Calendar, hath been discovered to be erroneous, by means whereof the vernal or spring equinox, which at the time of the general council of Nice in the year of our Lord three hundred and twenty-five happened on or about the twenty-first day of March, now happens on the ninth or tenth day of the same month; and the said error is still increasing, and if not remedied would in process of time occasion the several equinoxes and solstices to fall at very different times in the civil year from what they formerly did, which might tend to mislead persons ignorant of the said alteration: And whereas a method of correcting the calendar in such manner as that the equinoxes and solstices may for the future fall nearly on the same nominal days on which the same happened at the time of the said general council hath been received and established, and is now generally practised by almost all other nations of Europe: And whereas it will be of general convenience to merchants and other persons corresponding with other nations and countries, and tend to prevent mistakes and disputes in or concerning the dates of letters and accounts, if the like correction be received and established in his Majesty's dominions:

[1.] Abolition of old supputation of the year and provisions as to new reckoning of the days of the year

In and throughout all his Majesty's dominions and countries belonging or subject to the crown of Great Britain, the said supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December one thousand seven hundred and fifty-one; and that the first day of January next following the said last day of December shall be reckoned, taken, deemed, and accounted to be the first of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January which shall happen next

after the said first day of January one thousand seven hundred and fifty-two shall be reckoned, taken, deemed, and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-three; and so on from time to time the first day of January in every year which shall happen in time to come shall be reckoned, taken, deemed, and accounted to be the first day of the year, and that each new year shall accordingly commence and begin to be reckoned from the first day of every such month of January next preceding the twenty-fifth day of March on which such year would according to the present supputation have begun or commenced; and that from and after the said first day of January one thousand seven hundred and fifty-two the several days of each month shall go on, and and be reckoned and numbered in the same order, and that the natural day next immediately following the said second day of September shall be called, reckoned, and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar; and that the several natural days which shall follow and succeed next after the said fourteenth day of September shall be respectively called, reckoned, and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days now used in the present calendar; and that all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, whether ecclesiastical or civil, publick or private, which shall be made, executed, or signed upon or after the said first day of January one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation.

2. Provisions as to common years and leap years

AND for the continuing and preserving the calendar or method of reckoning, and computing the days of the year in the same regular course, as near as may be, in all times coming, be it further enacted by the authority aforesaid, that the several years of our Lord one thousand eight hundred, one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth years of our Lord which shall happen in time to come, except only every fourth hundredth year of our Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be bissextile or leap years, but shall be taken to be common years consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year of our Lord from the said year of our Lord two thousand inclusive, and also all other years of our Lord which by the present supputation are esteemed to be bissextile or leap years, shall for the future and in all times to come be esteemed and taken to be bissextile or leap years, consisting of three hundred and sixty-six days, in the same sort and manner as is now used with respect to every fourth year of our Lord.

FIRES PREVENTION (METROPOLIS) ACT 1774

(14 Geo. 3, c. 78)

83. Money insured on houses burnt how to be applied.

AND in order to deter and hinder ill-minded persons from wilfully setting their house or houses or other buildings on fire with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered: Be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorised and required, upon the request of any person or persons interested in or intitled unto any house or houses or other buildings which may hereafter be burnt down, demolished or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons who shall have insured such house or houses or other buildings have been guilty of fraud, or of wilfully setting their house or houses or other buildings on fire, to cause the insurance money to be laid out and expended, as far as the same will go, towards rebuilding, reinstating or repairing such house or houses or other buildings so burnt down, demolished or damaged by fire, unless the party or parties claiming such insurance money shall, within sixty days next after his, her or their claim is adjusted, give a sufficient security to the governors or directors of the insurance office where such house or houses or other buildings are insured, that the same insurance money shall be laid out and expended as aforesaid, or unless the said insurance money shall be in that time settled and disposed of to and amongst all the contending parties, to the satisfaction and approbation of such governors or directors of such insurance office respectively.

86. No action to lie against a person where the fire accidentally begins.

AND no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall, after the said twenty-fourth day of June, accidentally begin, nor shall any recompence be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding: And in such case, if any action be brought, the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial thereupon to be had; and in case the plaintiff become nonsuited or discontinue his action or suit, or if a verdict pass against him, the defendant shall recover costs; provided that no contract or agreement made between landlord and tenant shall be hereby defeated or made void.

THE WITNESSES ACT 1806
(46 Geo. 3 c. 37)

An Act to declare the Law with respect to Witnesses refusing to answer [5th May 1806]

[1.] Witnesses cannot refuse to answer questions tending to establish their indebtedness, etc.

WHEREAS doubts have arisen whether a witness can by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to any penalty or forfeiture, but the answering of which may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of his Majesty or of some other person or persons.

A witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit either at the instance of his Majesty or of any other person or persons.

THE STATUTE OF FRAUDS AMENDMENT ACT 1828
(9 Geo. 4 c. 14)

Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements [9th May 1828]

6. Action not maintainable on representations of character, etc., unless they be in writing signed by the party chargeable

No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

THE WILLS ACT 1837 (U.K.)
7 Will. IV and I Vict., ch. 26

An Act for the amendment of the laws with respect to wills [*3 July 1837*

1. Interpretation—The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of

the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say),

The word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of [the Tenures Abolition Act 1660], or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries, and tenures *in capite* and by knight's service", and to any other testamentary disposition; and

The words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and

The words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and

Every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and

Every word importing the masculine gender only shall extend and be applied to a female as well as a male.

3. All property may be disposed of by will—It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not

been made; and also to estates *pur autre vie,* whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

6. Devolution of estates pur autre vie not disposed of by will—If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie,* whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

9. Formal requirements of will—No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; (that is to say), it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

10. Execution and validity of appointments by will—No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

13. Publication of will not requisite—Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

14. Will not to be void on account of incompetency of attesting witness—If any person who shall attest the execution of a will shall

at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

15. Gifts to an attesting witness, or his or her wife or husband, to be void—If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

16. Creditor attesting a will charging estate with debts to be admitted a witness—In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

17. Executor to be admitted a witness—No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

18. Revocation of wills by marriage—Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions).

19. No will to be revoked by presumption from altered circumstances—No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

20. Manner of revocation of will—No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

21. Alteration in a will after execution, except in certain cases, to have no effect unless executed as a will—No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent,

unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

22. Revoked will not to be revived otherwise than by re-execution or a codicil—No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner hereinbefore required and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

23. Subsequent conveyance or other act not to prevent operation of will—No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect of such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

24. Wills to be construed to speak from death of testator—Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

25. Residuary devises to include estates comprised in lapsed and void devises—Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

26. General devise of land to include copyhold and leasehold as well as freehold land—A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

27. General gift of realty or personalty to include property over which testator has a general power of appointment—A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

28. Devise of real estate without any words of limitation to pass the fee—Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

29. Construction of words "die without issue" or "die without leaving issue", etc.—In any devise or bequest of real or personal estate the words "die without issue", or "die without leaving issue", or "have no issue", or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise:

Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

30. Devise of realty to trustees or executors to pass the fee, etc.—Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

31. Trustees under an unlimited devise to take the fee in certain cases—Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such

beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

33. Gifts to children or other issue who leave issue living at the testator's death not to lapse—Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

THE WILLS ACT AMENDMENT ACT 1852 (U.K.)

15 and 16 Vict., ch. 24

An Act for the amendment of the Wills Act 1837
[17 June 1852

1. Position of testator's signature—Where by [the Wills Act 1837] it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is

written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

3. Interpretation of word "will"—The word "will" shall in the construction of this Act be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in [the Wills Act 1837].

4. Short Title—This Act may be cited as the Wills Act Amendment Act 1852.

THE CHANCERY AMENDMENT ACT 1858

(21 and 22 Vict., c. 27)

2. Power to Court of Chancery to award damages in certain cases.

In all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any convenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any convenant, contract, or agreement, it shall be lawful for the same Court, if it shall think fit, to award damages to the party injured, either in addition to or in substitution for such injunction or specific performance; and such damages may be assessed in such manner as the Court shall direct.

APPENDIX B

IMPERIAL LAWS APPLICATION BILL

Introduced in Parliament by the Minister of Justice, the Right Hon. Geoffrey Palmer, on 21 October 1986

ANALYSIS

A BILL INTITULED

An Act to specify the extent to which Imperial enactments, Imperial subordinate legislation, and other laws of England shall have effect as part of the laws of New Zealand

No. 76—1

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Imperial Laws Application Act **1986**.

(2) This Act shall come into force on the 1st day of January 1988.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

"Imperial enactment" means any part of the enacted law that has, or that at any time has had, effect as part of the laws of England; but does not include any Imperial subordinate legislation:

"Imperial subordinate legislation" means any part of any Orders in Council, orders, rules, regulations, schemes, warrants, bylaws, and other instruments made or to be made under any Imperial enactment; and includes Orders in Council and regulations made under any of the provisions of **subsections (4), (6), and (7)** of **section 8** of this Act if they are to be read together with and deemed part of any Imperial subordinate legislation:

"New Zealand enactment" means any part of any Act, ordinance, or other law at any time enacted in New Zealand; but does not include any New Zealand subordinate legislation:

"New Zealand subordinate legislation"—

(a) Means—

(i) Any part of any Order in Council, regulations, rules, or bylaws made under the authority of any New Zealand enactment; and

(ii) Any part of any Order in Council, Proclamation, notice, warrant, or instrument of authority that is made under any New Zealand enactment and extends or varies the scope or provisions of any New Zealand enactment:

(b) Does not include regulations made under any of the provisions of **subsections (4), (6), and (7)** of **section 8** of this Act, if they are to be read together with and deemed part of any Imperial subordinate legislation:

"Repealed", in relation to any Imperial enactment, means that the enactment has ceased to have effect as part of the laws of New Zealand; and "the repeal" has a corresponding meaning:

"Revoked", in relation to any Imperial subordinate legislation, means that the legislation has ceased to have effect as part of the laws of New Zealand; and "the revocation" has a corresponding meaning.

(2) Where, in any Imperial enactment or Imperial subordinate legislation or New Zealand enactment or New Zealand subordinate legislation, reference is made to whether or not any Imperial enactment or Imperial subordinate legislation is in force in New Zealand, that reference shall, for the purposes of this Act, be read as if that reference was to whether or not the last-mentioned enactment or legislation has effect as part of the laws of New Zealand.

Cf. 1922, No. 3270, s. 2 (Vic.); 1980, No. 9426, s. 2 (Vic.); 1969, No. 30, s. 4 (N.S.W.); 1978, c. 30, s. 21 (U.K.); 1936, No. 17, s. 2 (N.Z.)

PART I

General Provisions

3. Evidence of Imperial enactments and Imperial subordinate legislation—(1) Where this Act, or any other New Zealand enactment, or any New Zealand subordinate legislation, or any instrument or document that has to be construed according to the laws of New Zealand (whether the enactment, legislation, instrument, or document was passed or made before or after the commencement of this Act), cites any Imperial enactment, by its Short Title, or by year, statute, session, or chapter, or by Part, Division, section, or other term, the citation shall, unless a contrary intention appears, be read as referring to the enactment cited as shown in the authentic text thereof specified in **subsection (3)** of this section.

(2) Where, in any case to which **subsection (1)** of this section does not apply, it is necessary for the purposes of the laws of New Zealand, to ascertain the terms of any Imperial enactment, if there are variances between different editions of the Imperial Acts as to the terms of the enactment, its terms shall, unless the context otherwise requires, be ascertained from the authentic text thereof specified in **subsection (3)** of this section.

(3) References in this section to the authentic text of any Imperial enactment shall be read as referring to the text of the enactment, as it appears in—

(a) The first revised edition of the *Statutes Revised* in any case where the enactment appears in that edition:

(b) The edition prepared under the direction of the Record Commission and called the *Statutes of the Realm,* if the enactment was passed before the end of the reign of Queen Anne in 1713, and is included in the last-mentioned edition, but is not included in the first revised edition of the *Statutes Revised:*

(c) The edition known as *Ruffhead's Statutes at Large (by Serjeant Runnington—1786),* if the enactment was passed before the end of the session of the 25th year of the reign of King George the Third in 1785, and is included in the last-mentioned edition, but is not included in either—

(i) The first revised edition of the *Statutes Revised;* or

(ii) The *Statutes of the Realm:*

(d) The Acts printed by the Queen's or King's Printer, or under the superintendence or authority of Her Majesty's Stationery Office in the United Kingdom, in any other case.

(4) Judicial notice shall be taken of—

(a) The editions mentioned in **subsection (3)** of this section and of the contents thereof; and

(b) The Acts printed as mentioned in **paragraph (d)** of that subsection.

(5) In any case where it is necessary, in accordance with this section, to ascertain the meaning of the authentic text of any Imperial enactment that was passed in or before the reign of King Henry the Seventh and was originally expressed in Latin or Norman-French, the translation shown in the edition in which the authentic text appears as a translation of that authentic text shall be deemed to be correct, and judicial notice shall be taken thereof.

(6) It is hereby declared that—

(a) Section 39 of the Evidence Act 1908 shall apply to Imperial subordinate legislation:

(b) Sections 34 and 39 of the Evidence Act 1908 shall not restrict the application of the foregoing provisions of this section to Imperial enactments.

Cf. ss. 3 and 4 of the Imperial Acts Application Act 1922 (Vic.); s. 19 of the Interpretation Act 1978 (U.K.); and the notes on the last-mentioned section in Halsbury's *Statutes of England,* 3rd Edition, Vol. 48, p. 1308

4. Application of laws of England in New Zealand—After the commencement of this Act, and subject to **section 10 (10)** of this Act,—

(a) Imperial enactments shall have effect as part of the laws of New Zealand to the extent provided by any one or more of the enactments and Orders in Council hereafter specified in this section, being—

(i) **Section 6** of this Act; and

(ii) Any Order in Council made under **section 11** of this Act; and

(iii) **Any Imperial enactment passed after the commencement of this Act that has effect as part of the laws of New Zealand in accordance with section 4 of the Statute of Westminster 1931 (U.K.) and section 3 (1) of the Statute of Westminster Adoption Act 1947 (N.Z.); and**

(iv) Any New Zealand enactment passed after the commencement of this Act,—

and shall be applied in New Zealand in the administration of justice accordingly:

(b) Imperial subordinate legislation shall have effect as part of the laws of New Zealand to the extent provided by or under **section 8** of this Act, and by **section 10 (10)** of this Act, and shall be applied in New Zealand in the administration of justice accordingly:

(c) The laws of England, other than Imperial enactments and Imperial subordinate legislation, shall have effect as part of the laws of New Zealand to the extent provided by section 2 of the English Laws Act 1908, and shall be applied in New Zealand in the administration of justice accordingly,—

except so far as the said enactments, legislation, and laws have been effectively amended or affected (**whether** before **or after** the commencement of this Act) by any Imperial enactments and Imperial subordinate legislation that from time to time have had or have effect as part of the laws of New Zealand (as provided by this Act), and (whether before or after the commencement of this Act) by any other New Zealand enactments and New Zealand subordinate legislation.

5. Construction of substituted enactments—In construing any New Zealand enactment that comes into force on the commencement of this Act and is in substitution for any Imperial enactment, or any New Zealand enactment that comes into force after the commencement of this Act and is in

substitution for any preserved Imperial enactment mentioned in the Schedule to this Act, regard shall be had to the context (if any) of the Imperial enactment for which the provision is substituted.

Cf. 1969, No. 30, s. 5 (N.S.W.)

6. Preserved Imperial enactments—(1) After the commencement of this Act, each Imperial enactment mentioned in the Schedule to this Act shall have effect as part of the laws of New Zealand to the extent provided by the enactment by virtue of which it is in force in New Zealand as shown in that Schedule, except so far as it has been effectively repealed, amended, or affected as part of the laws of New Zealand,—

(a) Whether upon the commencement of this Act, or before or after the commencement of this Act, by any New Zealand enactments (including this Act); and

(b) Before the commencement of this Act by any Imperial enactments and any Imperial subordinate legislation.

(2) Notwithstanding **subsection (1)** of this section, after the commencement of this Act—

(a) The Short Titles Act 1896 (U.K.), and sections 5 and 6 (1) of, and the Second Schedule to, the Statute Law Revision Act 1948 (U.K.) shall have effect as part of the laws of New Zealand only so far as they relate to other Imperial enactments that for the time being have effect as part of the laws of New Zealand:

(b) The Interpretation Act 1978 (U.K.) and all Imperial enactments passed in amendment thereof or in substitution therefor (**whether before or after the commencement of this Act**) shall have effect as part of the laws of New Zealand so far as they relate to—

(i) Any Imperial enactment and any Imperial subordinate legislation that for the time being has effect as part of the laws of New Zealand; and

(ii) Any other Imperial enactment or Imperial subordinate legislation when it applies, in accordance with the laws of New Zealand, to any contract, instrument, or transaction:

(c) Sections 1 and 6 of the Statute of Monopolies (21 Ja. 1, c. 3) shall have effect as part of the laws of New Zealand so far as they had effect as part of the laws of England at the commencement of this Act:

(d) The Accession Declaration Act 1910 (U.K.) shall have effect as part of the laws of New Zealand.

7. Repeal of all Imperial enactments not expressly preserved—(1) Except as provided by—

(a) **Section 6** of this Act; or

(b) Any Order in Council made under **section 11** of this Act; or

(c) **Any Imperial enactment that is passed after the commencement of this Act and has effect as part of the laws of New Zealand in accordance with section 4 of the Statute of Westminster 1931 (U.K.) and section 3 (1) of the Statute of Westminster Adoption Act 1947 (N.Z.); or**

(d) Any New Zealand enactment passed after the commencement of this Act,—

no Imperial enactments passed before the commencement of this Act shall have effect as part of the laws of New Zealand after the commencement of this Act.

(2) The repeal of the Imperial Act 7 George 2, chapter 8 (Sir John Barnard's Act) effected by **subsection (1)** of this section shall be deemed to have taken effect on the 14th day of June 1860:

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been commenced on or before the 9th day of October 1981 (being the date on which the Imperial Laws Application Bill 1981 was introduced into the House of Representatives).

Cf. 1969, No. 30, s. 8 (N.S.W.)

8. Preservation of Imperial subordinate legislation—(1) After the commencement of this Act, Imperial subordinate legislation, other than any to which **section 10 (10)** of this Act applies,—

(a) Shall have effect as part of the laws of New Zealand to the extent provided by or under the following provisions of this section, and shall be applied in New Zealand in the administration of justice accordingly:

(b) Shall not otherwise have effect as part of the laws of New Zealand.

(2) So far as—

(a) Any Imperial subordinate legislation made under any Imperial enactment mentioned in the Schedule to this Act had effect as part of the laws of New Zealand immediately before the commencement of this Act; and

(b) Any Imperial subordinate legislation, made under an Imperial enactment that has been repealed in relation to New Zealand by a New Zealand enactment, had effect as part of the laws of New Zealand immediately before the commencement of this Act by reason of any provision in the New Zealand enactment that made the repeal or in any later New Zealand enactment—

that Imperial subordinate legislation shall, to that extent and so far as it is for the time being applicable to the circumstances of New Zealand, have effect as part of the laws of New Zealand after the commencement of this Act, except so far as it has been effectively revoked, amended, or affected as part of the laws of New Zealand, after the commencement of this Act, by any New Zealand enactments and any New Zealand subordinate legislation, **and by any Imperial enactments and any Imperial subordinate legislation**:

Provided that nothing in this subsection shall apply to any Orders in Council, rules, and regulations to which the proviso to section 513 (1) of the Shipping and Seamen Act 1952 applied immediately before the commencement of this Act:

Provided also that nothing in this subsection shall restrict the following provisions of this section or any Orders in Council or regulations made under **subsection (4) or subsection (6) or subsection (7)** of this section.

(3) The Imperial subordinate legislation that has effect as part of the laws of New Zealand includes—

(a) His Majesty's Order in Council under the British Settlements Act 1887 (U.K.) making provision for the government of the coast of the Ross Sea and the territories adjacent thereto, which Order in Council was made at the Court at Buckingham Palace on the 30th day of July 1923, and was published in the *New Zealand Gazette* on the 16th day of August 1923 at pages 2211 and 2212; and all rules, regulations, and instruments made under the said Order in Council that have effect as part of the laws of New Zealand at the commencement of this Act:

(b) His Majesty's Order in Council under the Colonial Boundaries Act 1895 (U.K.) that made provision for the extension of the boundaries of New Zealand to include the Cook Group and other islands, and was published in the *New Zealand Gazette* 1901, Volume 1, pages 1307 and 1308:

(c) All Imperial subordinate legislation—

(i) Under which appeals to the Judicial Committee of the Privy Council are governed in New Zealand; or

(ii) That is made under the Acts of the Parliament of the United Kingdom known as the Prize Acts 1864 to 1939 or under any later Act of the Parliament of the United Kingdom relating to prize that has effect as part of the laws of New Zealand,—

if that Imperial subordinate legislation has effect for the time being as part of the laws of England, and was made before the commencement of this Act:

(d) The Order in Council that relates to fugitive offenders and is mentioned in paragraph (b) of section 4 of the Fugitive Offenders Amendment Act 1976 (N.Z.) while that Order in Council is in force as part of the laws of New Zealand in accordance with that paragraph or in accordance with any New Zealand enactment that is for the time being in substitution therefor.

(Drafting note: See the list of items that appear in relation to "Extradition and Fugitive Offenders" in the *1985 Tables of New Zealand Public Acts and Statutory Regulations in Force* at pages 188 to 190.)

(4) The Governor-General, by Order in Council made under this subsection, may—

(a) Apply or extend to New Zealand as part of the laws of New Zealand, to such extent and subject to such provisions as may be set out in the Order in Council,—

(i) Any Imperial subordinate legislation made under any Imperial enactment or Imperial subordinate legislation so far as that enactment or the last-mentioned Imperial subordinate legislation has effect as part of the laws of New Zealand at the time when the Order in Council is made; and

(ii) Any other Imperial subordinate legislation so far as it had effect as part of the laws of New Zealand immediately before the commencement of this Act:

(b) Make regulations that declare that any Imperial subordinate legislation shall cease to have effect as part of the laws of New Zealand:

(c) Make regulations pursuant to the powers conferred by any Imperial enactment, as that enactment is affected by **subsection (6)** of this section, and so far as (for the time being) that enactment has effect as part of the laws of New Zealand, which regulations may—

(i) Amend in its application to New Zealand any Imperial subordinate legislation that for the time being has effect as part of the laws of New Zealand, including any Imperial subordinate legislation that has been applied or extended to New Zealand by Order in Council made under **paragraph (a)** of this subsection; and

(ii) Be made, in relation to New Zealand, for all or any of the purposes for which regulations may be made in exercise of those powers.

(5) All Orders in Council and regulations made under **subsection (4) or subsection (6) or subsection (7)** of this section shall have effect according to their tenor.

(6) After the commencement of this Act, any Imperial enactment that for the time being has effect as part of the laws of New Zealand and purports to give powers to make Imperial subordinate legislation that has effect as part of the laws of England or as part of the laws of New Zealand shall be construed, so far as applicable to the circumstances of New Zealand and with any necessary modifications, as conferring corresponding powers to make regulations that have effect as part of the laws of New Zealand on—

(a) The Sovereign in right of New Zealand acting by and with the advice and consent of the Executive Council; or

(b) The Governor-General in Council,—

and not otherwise.

(7) Without restricting the powers conferred by **subsection (6)** of this section it is hereby declared that any regulations made under that subsection may—

(a) Amend in its application to New Zealand any Imperial subordinate legislation that for the time being has effect as part of the laws of New Zealand; and

(b) Be made, in relation to New Zealand, for all or any of the purposes for which regulations may be made in exercise of those powers.

(8) Without restricting **paragraph (b) of subsection (1)** of this section, it is hereby declared that the following Proclamations shall not have effect as part of the laws of New Zealand after the commencement of this Act:

(a) The Proclamation by the Administrator of the Government, dated the 17th day of March 1897, and published in the *New Zealand Gazette* on the 25th day of March 1897 at page 731, which Proclamation promulgated for New Zealand the Proclamation mentioned in **paragraph (b)** of this subsection:

(b) The Proclamation by Her Majesty the Queen, dated the 1st day of August 1896, and published in the *New Zealand Gazette* on the 25th day of March 1897 at pages 731 to 733, which Proclamation made provision for the application of parts of the Coinage Act 1870 (as amended by the Coinage Act 1891) to the Australasian colonies.

Drafting notes:

1. Further exploratory work and research will be directed towards ensuring that the Bill preserves or saves or leaves unaffected all Imperial subordinate legislation and instruments that have significance for the purposes of the laws of New Zealand. *Subclause (3) of clause 8* will aim to include special provisions in all cases that need to be covered by that subclause.

2. New Zealand material that will be looked at includes—

(a) Curnin's *Index to the Laws of New Zealand,* 28th Edition, which is known to include some references to Imperial subordinate legislation that has relevance for the purposes of the laws of New Zealand:

(b) The *1985 Tables of New Zealand Public Acts and Statutory Regulations in Force,* which are known to include some references to Imperial subordinate legislation that has relevance in New Zealand, e.g., the Merchant Shipping (Registration of New Zealand Government Ships) Order 1946 (S.R. 1946/174), and the items at pages 188 to 190 relating to "Extradition and Fugitive Offenders".

3. English material that will be looked at includes Halsbury's *Statutory Instruments* and the English *Index to Government Orders.* The initial purposes in looking at this English material will be—

(a) To see how it can be used to provide ready reference to Imperial subordinate legislation that has been made under Imperial enactments that are being preserved by the Bill:

(b) To see (by making test probes) whether it points to classes of Imperial subordinate legislation that are not covered by *clauses 8 and 10 (10)* of the Bill as they now stand.

9. Offences not punishable except under New Zealand law—(1) Nothing in this Act shall restrict section 9 of the Crimes Act 1961.

(2) For the avoidance of doubt it is hereby declared that section 107 of the Crimes Act 1961 shall not extend to any contravention of any Imperial enactment or Imperial subordinate legislation that has effect as part of the laws of New Zealand after the commencement of this Act, or to any omission to do any act which any such Imperial enactment or Imperial subordinate legislation requires to be done.

10. Savings—(1) References in this section to a repeal or revocation to which this section applies mean any repeal of an Imperial enactment, or any revocation of any Imperial subordinate legislation, that is made by—

(a) This Act; or

(b) Any New Zealand enactment that comes into force on the date of the commencement of this Act; or

(c) Any New Zealand enactment or New Zealand subordinate legislation that comes into force after the date of the commencement of this Act, if the repeal or revocation relates to an Imperial enactment or any Imperial subordinate legislation that continues to have effect as part of the laws of New Zealand after the date of the commencement of this Act in accordance with this Act.

(2) No repeal or revocation to which this section applies shall—

(a) Revive anything not in force or existing at the time of the repeal or revocation; or

(b) Revive any doctrine of the common law affected, amended, or repealed by the Imperial enactment to which the repeal relates, or the Imperial subordinate legislation to which the revocation relates; or

(c) Affect the previous operation of the repealed Imperial enactment or the revoked Imperial subordinate legislation or anything duly done or suffered under the repealed Imperial enactment or the revoked Imperial subordinate legislation; or

(d) Affect any right, power, estate, privilege, obligation, or liability, acquired, accrued, or incurred under the repealed Imperial enactment or the revoked Imperial subordinate legislation; or

(e) Affect any investigation, legal proceeding, or remedy in respect of any such right, power, estate, privilege, obligation, or liability as aforesaid.

(3) Any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced as if the Act providing for the repeal had not been passed or the revocation had not been made.

(4) Without restricting **subsections (2) and (3)** of this section and subject to the provisions of those subsections, it is hereby declared that the provisions of sections 20, 20A, and 21 of the Acts Interpretation Act 1924 shall apply to Imperial enactments and Imperial subordinate legislation repealed or revoked by a repeal or revocation to which this section applies, as if the said Imperial enactments were Acts of the **General Assembly** of New Zealand so repealed and the said Imperial subordinate legislation was New Zealand subordinate legislation so revoked.

(5) Where any Imperial enactment or Imperial subordinate legislation, being an enactment or legislation that has not been repealed or revoked by a repeal or revocation to which this section applies, has been repealed or revoked (whether expressly or impliedly), confirmed, revived, or perpetuated by any Imperial enactment or Imperial subordinate legislation, being an enactment or legislation that has been repealed or revoked by a repeal or revocation to which this section applies, the first-mentioned repeal or revocation, or the confirmation, revivor, or perpetuation shall not be affected by the repeal or revocation to which this section applies.

(6) The repeal by this Act, in relation to New Zealand, of the Imperial Act 43 Elizabeth 1, chapter 4 (The Charitable Uses Act 1601) shall not affect the established rules of law relating to charities.

(7) In relation to New Zealand Government securities that had been registered with the Bank of England in the United Kingdom before the 1st day of April 1978 (being the date of the commencement of the Public Finance Act 1977), and have not been transferred, either before or after the commencement of this Act, to the register kept in force pursuant to section 44 of the New Zealand Loans Act 1953 (as affected by section 162 of the Public Finance Act 1977), and except so far as the Imperial enactments specified in **paragraphs (a) and (b)** of this subsection have been affected by any Imperial enactments and Imperial subordinate legislation that from time to time had effect as part of the laws of New Zealand and by any New Zealand enactments and New Zealand subordinate legislation, and notwithstanding the repeal by this Act of the Imperial enactments specified in the said **paragraphs (a) and (b)**,—

(a) The Colonial Stock Acts 1877 to 1948 (U.K.) shall, from the commencement of this Act, continue to have effect as part of the laws of New Zealand:

(b) The Forged Transfers Act 1891 (U.K.) and the Forged Transfers Act 1892 (U.K.) shall, from the date of the adoption by the Government of New Zealand of the said Forged Transfers Act 1891 or the date of the commencement of this Act, whichever later occurs, have effect as part of the laws of New Zealand:

(c) Subject to the foregoing provisions of this subsection, this Act shall apply to the Imperial enactments specified in **paragraphs (a) and (b)** of this subsection, while they have effect as part of the laws of New Zealand in accordance with this subsection, as if they were mentioned in **Division II of Part II** of the Schedule to this Act.

(8) In any instance where the word "heir", or any expression that includes the word "heir", falls to be construed as a reference to the heir at law, the established rules of law for ascertaining the heir at law shall have effect as if the Inheritance Act 1833 (3 and 4 Will. 4, c. 106) had not been repealed by this Act.

(9) Without restricting **subsections (6) to (8)** of this section, in any other case where any Imperial enactment or Imperial subordinate legislation is repealed or revoked by a repeal or revocation to which this section applies, the repeal or revocation shall not affect any rules of law or equity not enacted by the repealed enactment or the revoked Imperial subordinate legislation.

(10) Nothing in this Act shall limit or affect—

(a) The privileges enjoyed by law by the House of Representatives and the committees and members thereof:

(b) The Letters Patent constituting the office of Governor-General dated the 28th day of October 1983 (S.R. 1983/225) or any subsequent Letters Patent that amend, or are in substitution for, the Letters Patent first-mentioned in this paragraph, or any Commission that may issue to any Governor-General under the Seal of New Zealand:

(c) The Letters Patent passed under the Great Seal of the United Kingdom for the annexation of certain islands known as the Kermadec Group to New Zealand, which Letters Patent are published in the *New Zealand Gazette,* 1887, Volume 1, page 433, and have effect in accordance with the Colonial Boundaries Act 1895 (U.K.):

(d) Any other Letters Patent, Royal Charter, information, writ, or instrument made or issued under the Royal Prerogative:

Provided that this paragraph shall not limit or affect the abolition of informations of intrusion and writs of intrusion by section 12 (2) of the Crown Proceedings Act 1950, and the Second Schedule to that Act as that Schedule is amended by **section 18** of **the Crown Proceedings Amendment 1986**:

(e) Any measure passed by the National Assembly or the General Synod of the Church of England:

(f) Any Imperial enactment or Imperial subordinate legislation relating to notaries public; or the power of the Master of the Faculties of the Archbishop of

Canterbury to issue a faculty to any person to practice as a notary public in New Zealand; or the functions and powers of a person to whom such a faculty is issued; or the established rules and practice relating to such a notary public; or to the regulation of the conduct, practices, and discipline of notaries public:

(g) Any order, notice, or instrument relating to extradition and fugitive offenders or either of those subjects:

(h) Any Imperial subordinate legislation so far as it applies or extends to New Zealand as part of the laws of England, but not as part of the laws of New Zealand.

Cf. 1922, No. 3270, s. 7 (Vic.); 1969, No. 30, ss. 9, 10 (N.S.W.); 1973, No. 119, s. 14 (2) (N.Z.); 61 and 62 Vict., c. 22, s. 1 (U.K.)

11. Revival of repealed enactments—(1) Where it is desirable to revive any provision (in this section called "the revived provision"), being the whole or any part of any Imperial enactment repealed by this Act, the Governor-General may, by Order in Council, amend the Schedule to this Act by adding thereto or inserting therein an expression that identifies the revived provision.

(2) Every such Order in Council shall come into force on the 14th day after the date of its notification in the *Gazette* or on such later date as may be specified in the order.

(3) Upon any such Order in Council coming into force, the revived provision to which it relates shall, except so far as it has been amended or affected by any Imperial enactments and Imperial subordinate legislation that from time to time had effect as part of the laws of New Zealand, and by any New Zealand enactments and New Zealand subordinate legislation, and subject to **subsection (4)** of this section, have such effect in New Zealand as the revived provision had in New Zealand immediately before the commencement of this Act.

(4) The revival under this section of any revived provision shall not affect—

(a) The previous operation of any repeal by **section 7** of this Act:

(b) Anything duly done or suffered before the date of the revival:

(c) Any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of the revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, or liability.

(5) Every Order in Council made under this section is hereby declared to be a regulation within the meaning of section 2 of the Regulations Act 1936, and shall be laid before the House of Representatives in accordance with section 8 of that Act.

(6) If, within 20 sitting days after the date on which any such Order in Council has been laid before the House of Representatives, the House of Representatives passes a resolution disallowing that Order in Council or part thereof, the Order in Council or part thereof, and the revival for which it provides, shall thereupon cease to have effect:

Provided that this subsection shall not restrict the effect of the Order in Council before the disallowance.

Cf. 1969, No. 30, s. 11 (N.S.W.); 1982, No. 167, s. 6 (N.Z.)

PART II

SUBSTITUTED AND CONSEQUENTIAL ENACTMENTS TO BE PASSED AS SEPARATE ACTS

Acts Interpretation

12. Sections to be read with Acts Interpretation Act 1924—(1) This section and the **next succeeding** section shall be read together with and deemed part of the Acts Interpretation Act 1924* (in that section referred to as the principal Act).

(2) This section and the **next succeeding** section shall come into force on the **1st day of January 1988.**

*R.S. Vol. 1, p. 7

13. References to be made to copies printed by authority—Section 17 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) In the case of Imperial Acts, in accordance with **section 3** of the Imperial Laws Application Act **1986** and sections 34 and 39 of the Evidence Act 1908:".

Contracts Enforcement

14. Sections to be read with Contracts Enforcement Act 1956—(1) This section and the **next 2 succeeding** sections shall be read together with and deemed part of the Contracts Enforcement Act 1956* (in those sections referred to as the principal Act).

*R.S. Vol. 1, p. 535

(2) This section and the **next 2 succeeding** sections shall come into force on the **1st day of January 1988.**

15. New section inserted—The principal Act is hereby amended by inserting, after section 2, the following section:

"2A. **Action not maintainable on representations of character, etc., unless they are in writing signed by the party chargeable**—No action shall be brought to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that the other person may obtain credit, money, or goods upon the representation or assurance, unless the representation or assurance is made in writing, signed by the party to be charged therewith."

Cf. Statute of Frauds Amendment Act 1828, s. 6 (U.K.)

16. Repeal—The new **section 2A** of the principal Act (as inserted by **section 15** of the Imperial Laws Application Act **1986**), is in substitution for section 6 of the Statute of Frauds Amendment Act 1928, and that section shall cease to have effect as part of the laws of New Zealand on the date of the commencement of this section.

Crown Proceedings

17. Sections to be read with Crown Proceedings Act 1950—(1) This section and the **next succeeding** section shall be read together with and deemed part of the Crown Proceedings Act 1950* (in those sections referred to as the principal Act).

*R.S. Vol. 2, p. 23

(2) This section and the **next succeeding** section shall come into force on the **1st day of January 1988.**

18. Abolition of informations of intrusion and writs of intrusion—The Second Schedule to the principal Act is hereby amended by adding to clause 1 the following paragraph:

"(d) Informations of intrusion and writs of intrusion."

English Laws

19. Sections to be read with English Laws Act 1908—(1) This section and the **next 2 succeeding** sections shall be read together with and deemed part of the English Laws Act 1908* (in those sections referred to as the principal Act).

(2) This section and the **next 2 succeeding** sections shall come into force on the **1st day of January 1988.**

*R.S. Vol. 6, p. 359

20. Restriction of application of section 2—Section 2 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

"(2) This section shall be subject to the Imperial Laws Application Act **1986.**"

21. Repeals—Section 3 of, and the Second Schedule to, the principal Act are hereby repealed.

Evidence

22. Sections to be read with Evidence Act 1908—(1) This section and the **next 2 succeeding** sections shall be read together with and deemed part of the Evidence Act 1908* (in those sections referred to as the principal Act).

(2) This section and the **next 2 succeeding** sections shall come into force on the **1st day of January 1988.**

*R.S. Vol. 2, p. 341

23. New section inserted—(1) The principal Act is hereby amended by inserting, after the heading "*Privilege of Witnesses*", the following section:

"6A. **Questions tending to establish a debt or civil liability**—A witness shall not be excused from answering any question relevant to the proceedings on the sole ground that to answer the question may establish or tend to establish that the witness owes a debt, or otherwise subject the witness to any civil liability."

(2) **Section 6A** of the Evidence Act 1908 (as inserted by subsection (1) of this section) is in substitution for the Witnesses Act 1806 (46 Geo. 3, c. 37), and that Act shall cease to have effect as part of the laws of New Zealand after the commencement of this section.

24. Copy of public Act, Imperial legislation, and regulations printed as prescribed to be evidence—Section 29 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

"(1) Every copy of any public Act, or of any Imperial enactment or Imperial subordinate legislation (as defined in section 2 of the Imperial Laws Application Act **1986**), being a copy printed under the authority of the Government by the Government Printer and whether before or after the commencement of this subsection, shall be evidence of that Act or Imperial enactment or Imperial subordinate legislation and its contents; and every copy of any such Act or Imperial enactment or Imperial subordinate legislation purporting to be printed as aforesaid shall be deemed to be so printed unless the contrary is proved.

"(1A) Every copy of any Imperial enactment or Imperial subordinate legislation, being a copy purporting to be printed by the Queen's or King's Printer or under the superintendence or authority of Her Majesty's Stationery Office in the United Kingdom, and whether printed before or after the commencement of this subsection, shall, unless the contrary is proved,—

"(a) Be evidence of the enactment and its contents; and

"(b) Be deemed to be so printed; and

"(c) Be deemed to be identical with the authentic text of that enactment specified in **section 3 (3)** of the Imperial Laws Application Act **1986**."

Judicature

25. Sections to be read with Judicature Act 1908—(1) This section and the **next 2 succeeding** sections shall be read together with and deemed part of the Judicature Act 1908* (in those sections referred to as the principal Act).

(2) This section and the **next 2 succeeding** sections shall come into force on the **1st day of January 1988.**

26. New section inserted—The principal Act is hereby amended by inserting, after section 16, the following section:

"16A. **Power to award damages as well as, or in substitution for, injunction or specific performance**—Where the Court has jurisdiction to entertain an application

for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance."

Cf. 21 and 22 Vict., c. 27—The Chancery Amendment Act 1858 (U.K.); the Supreme Court Act 1981, s. 50 (U.K.)

27. Repeal—Section 16A of the Judicature Act 1908 (as inserted by **section 26** of this Act) is in substitution for section 2 of the Chancery Amendment Act 1858, and that Act shall cease to have effect as part of the laws of New Zealand after the commencement of this section.

*1957 Reprint, Volume 6, page 699

Shipping and Seamen

28. Sections to be read with Shipping and Seamen Act 1952—(1) This section and the **next succeeding** section shall be read together with and deemed part of the Shipping and Seamen Act 1952* (in that section referred to as the principal Act).

(2) This section and the **next succeeding** section shall come into force on the **1st day of January 1988.**

*R.S. Vol. 4, p. 779

29. Repeal and revocations—(1) The principal Act is hereby amended by repealing the proviso to subsection (1) of section 513.

(2) All Orders in Council, rules, and regulations that were made under the United Kingdom Merchant Shipping Act (as defined in the principal Act) and had effect as part of the laws of New Zealand immediately before the commencement of this subsection by reason of the said proviso to subsection (1) of section 513 of the principal Act shall cease to have effect as part of the laws of New Zealand on the date of the commencement of this subsection.

SCHEDULE

PRESERVED ENACTMENTS

PART I

Imperial Enactments in Force in New Zealand by Virtue of Section 2 of the English Laws Act 1908 (N.Z.)

DIVISION I

Constitutional Enactments

(1297) 25 Edw. I (Magna Carta), c. 29.
(1351) 25 Edw. 3, St. 5, c. 4.
(1354) 28 Edw. 3, c. 3.
(1368) 42 Edw. 3, c. 3.
(1627) 3 Cha. I, c. 1—The Petition of Right.
(1640) 16 Cha. 1, c. 10—The *Habeas Corpus* Act 1640.
(1688) 1 Will. and Mar., Sess. 2, c. 2—The Bill of Rights.
(1700) 12 and 13 Will. 3, c. 2—The Act of Settlement: The Title and Preamble; section 1; section 2 omitting the words "according to" to "an Act for establishing the coronation oath"; also omitting the words "Act first above recited mentioned or referred to", and substituting the words "Accession Declaration Act 1910"; section 3 omitting all the words after the words "the Church of England as by law established".
(1772) 12 Geo. 3, c. 11—The Royal Marriages Act 1772: sections 1 and 2.

DIVISION II

Enactments Relating to Property

(1289–90) 18 Edw. 1, St. 1—*Quia Emptores.*
(1361) 34 Edw. 1, c. 15.
(1539) 31 Hen. 8, c. 1—The Partition Act 1539.
(1540) 32 Hen. 8, c. 32—The Partition Act 1540.
(1830) 11 Geo. 4 and 1 Will. 4, c. 46—The Illusory Appointments Act 1830.
(1832) 2 and 3 Will. 4, c. 71—The Prescription Act 1832.
(1874) 37 and 38 Vict., c. 37—The Powers of Appointment Act 1874.
[more to come]

DIVISION III

Other Enactments

(1666) 18 and 19 Cha. 2, c. 11—The *Cestui Que Vie* Act 1666: Title, Preamble, and section 1.
(1679) 31 Cha. 2, c. 2—The *Habeas Corpus* Act 1679, except sections 10 and 14.
(1728) 2 Geo. 2, c. 22 (Set-off)—Title and section 13.
(1734) 8 Geo. 2, c. 24 (Set-off)—Title and sections 4 and 5.
(1750) 24 Geo. 2, c. 23—The Calendar (New Style) Act 1750: So much of the Act as appears before section 3; but omitting from section 1 the words "in Europe, Asia, Africa, and America"; also omitting from section 1 the words "and the feast of Easter" to "one thousand seven hundred and fifty-two inclusive"; also omitting from section 1 all the words after "bear date according to the new method of supputation".

(1774) 14 Geo. 3, c. 78—The Fires Prevention (Metropolis) Act 1774: sections 83 and 86.
(1803) 43 Geo. 3, c. 140—The *Habeas Corpus* Act 1803.
(1816) 56 Geo. 3, c. 100—The *Habeas Corpus* Act 1816.
(1833) 3 and 4 Will. 4, c. 41—The Judicial Committee Act 1833, except sections 22 to 24.
(1837) 7 Will. 4 and 1 Vict., c. 26—The Wills Act 1837.

PART II

Imperial Enactments in Force in New Zealand otherwise than by virtue of Section 2 of the English Laws Act 1908 (N.Z.)

DIVISION I

Constitutional Enactments

Imperial Enactment	Enactment by Virtue of Which it is in Force in New Zealand
(1623–4) 21 Ja. 1, c. 3—(The Statute of Monopolies), sections 1 and 6.	Section 6 (2) (c) of this Act.
(1852) 15 and 16 Vict., c. 72—The New Zealand Constitution Act 1852: sections 32, 44, 46, 53 to 56, 66, 71, 72, and 82.	**15 and 16 Vict., c. 72 (U.K.).**
(1863) 26 and 27 Vict., c. 23—The New Zealand Boundaries Act 1863.	26 and 27 Vict., c. 23 (U.K.).
(1865) 28 and 29 Vict., c. 63—The Colonial Laws Validity Act 1865.	**28 and 29 Vict., c. 63 (U.K.).**
(1895) 58 and 59 Vict., c. 34—The Colonial Boundaries Act 1895.	58 and 59 Vict. c. 34 (U.K.).
(1910) 10 Edw. 7 and 1 Geo. 5, c. 29—The Accession Declaration Act 1910.	**Section 6 (2) (d)** of this Act.
(1931) 22 Geo. 5, c. 4—The Statute of Westminster 1931, except sections 7 and 9.	22 Geo. 5, c. 4, and the Statute of Westminster Adoption Act 1947 (N.Z.).
(1947) 11 Geo. 6, c. 4—The New Zealand Constitution (Amendment) Act 1947.	The New Zealand Constitution Amendment (Request and Consent) Act 1947 (N.Z.); and 11 Geo. 6, c. 4.

DIVISION II

Other Enactments

Imperial Enactment	Enactment by Virtue of Which it is in Force in New Zealand
(1843) 6 and 7 Vict., c. 38—The Judicial Committee Act 1843.	The Judicial Committee Act 1843 (U.K.).
(1844) 7 and 8 Vict., c. 69—The Judicial Committee Act 1844.	The Judicial Committee Act 1844 (U.K.).
(1850) 13 and 14 Vict., c. 26—The Piracy Act 1850: Title, Preamble, and section 5, omitting the words "or the ships or vessels of war of the East India Company"; also omitting the words "if such" to "ships or their boats" (where they first occur); also omitting all words after "declare and direct".	The Piracy Act 1850 (U.K.).
(1851) 14 and 15 Vict., c. 83—The Court of Chancery Act 1851: So much of section 16 as prescribes the quorum of the Judicial Committee of the Privy Council	14 and 15 Vict., c. 83, s. 16.
(1852) 15 and 16 Vict., c. 24—The Wills Amendment Act 1852.	Sections 2 and 3 of the English Acts Act 1860, and section 3 of the English Laws Act 1908 (N.Z.).
(1859) 22 and 23 Vict., c. 63—The British Law Ascertainment Act 1859.	22 and 23 Vict., c. 63 (U.K.).
(1864) 27 and 28 Vict., c. 25—The Naval Prize Act 1864.	Section 8 (1) of the Admiralty Act 1973 (N.Z.).
(1873) 36 and 37 Vict., c. 88—The Slave Trade Act 1873 (U.K.).	The Slave Trade Act 1873 (U.K.).
(1876) 39 and 40 Vict., c. 59—The Appellate Jurisdiction Act 1876: section 14 [as amended by the Statute Law Revision Act 1894 (U.K.)].	Section 14 of the Appellate Jurisdiction Act 1876 (U.K.).
(1881) 44 and 45 Vict., c. 69—The Fugitive Offenders Act 1881.	Section 4 of the Fugitive Offenders Amendment Act 1976 (N.Z.).
(1887) 50 and 51 Vict., c. 54—The British Settlements Act 1887.	The British Settlements Act 1887 (U.K.).
(1894) 57 and 58 Vict., c. 39—The Prize Courts Act 1894.	Section 8 (1) of the Admiralty Act 1973 (N.Z.).
(1895) 58 and 59 Vict., c. 44—The Judicial Committee Amendment Act 1895.	58 and 59 Vict., c. 44 (U.K.).
(1896) 59 and 60 Vict., c. 14—The Short Titles Act 1896: So much thereof as is in force in New Zealand in accordance with **section 6 (2) (a)** of this Act.	**Section 6 (2) (a)** of this Act.

PART II—*continued*

DIVISION II—*continued*

Other Enactments—continued

Imperial Enactment	Enactment by Virtue of Which it is in Force in New Zealand
(1908) 8 Edw. 7, c. 51—The Appellate Jurisdiction Act 1908, except sections 2, 3 (2), and 6.	8 Edw. 7, c. 51 (U.K.).
(1913) 3 and 4 Geo. 5, c. 21—The Appellate Jurisdiction Act 1913.	3 and 4 Geo. 5, c. 21.
(1914) 4 and 5 Geo. 5. c. 13—The Prize Courts (Procedure) Act 1914.	Section 8 (1) of the Admiralty Act 1973 (N.Z.).
(1915) 5 and 6 Geo. 5, c. 39—The Fugitive Offenders (Protected States) Act 1915	The Fugitive Offenders Amendment Act 1976, ss. 2, 4 (N.Z.).
(1915) 5 and 6 Geo. 5, c. 57—The Prize Courts Act 1915.	Section 8 (1) of the Admiralty Act 1973 (N.Z.).
(1915) 5 and 6 Geo. 5, c. 92—The Judicial Committee Act 1915.	5 and 6 Geo. 5, c. 92 (U.K.).
(1916) 6 and 7 Geo. 5, c. 2—The Naval Prize (Procedure) Act 1916.	Section 8 (1) of the Admiralty Act 1973 (N.Z.).
(1920) 10 and 11 Geo. 5, c. 27—The Nauru Island Agreement Act 1920.	10 and 11 Geo. 5, c. 27.
(1928) 18 and 19 Geo. 5, c. 26—The Administration of Justice Act 1928, ss. 13, 20 (1).	18 and 19 Geo. 5, c. 26 s. 13 (U.K.).
(1939) 2 and 3 Geo. 6, c. 65—The Prize Act 1939.	Section 8 (1) of the Admiralty Act 1973 (N.Z.).
(1945) 9 Geo. 6, c. 7—The British Settlements Act 1945.	The British Settlements Act 1945 (U.K.).
(1948) 11 and 12 Geo. 6, c. 62—The Statute Law Revision Act 1948, sections 5 and 6 (1) and the Second Schedule.	**Section 6 (2) (a)** of this Act.
1978, c. 30—The Interpretation Act 1978 so far as it is in force in New Zealand in accordance with **section 6 (2) (b)** of this Act.	**Section 6 (2) (b)** of this Act.

Note: Bold type indicates that the position is being watched.

WELLINGTON, NEW ZEALAND: Printed under the authority of the New Zealand Government by V. R. WARD, Government Printer—1987

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